

BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

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In the Matter of:

PUBLIC & TRIBAL FORUMS

ON

HYDROPOWER LICENSING REGULATIONS  
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Marriott Courtyard  
300 W. Wisconsin Avenue  
Milwaukee, Wisconsin  
Thursday, October 17, 2002

The above-entitled matter came on for  
hearing, pursuant to notice, at 9:15 a.m.

BEFORE:

Ron McKittrick

Mona Janopaul

Bob Dach

Tim Welch

Rich Torquemada

Ann Miles

Ken Hogan

## PROCEEDINGS

MR. McKITRICK: Good morning. My name is Ron McKitrick. I'm with the Federal Energy Regulatory Commission, and myself and Rich Torquemada with the Forest Service out of this region will kind of start the meeting.

We have planned a couple short presentations, and then we're very interested in concerns, and hopefully we'll have some sort of discussion after that to interact and see what you may want to present to us.

What I'd like to do is maybe just a little more informally kind of go around the table and have everyone introduce themselves so that you know who they are and who they're with, and the folks that have come to talk to us do the same thing. So if we could start over here. Just name who you're with so everybody knows.

MR. WELCH: I'm Tim Welch. I'm with FERC. I'm a fishery biologist.

MS. JANOPAUL: I'm Mona Janopaul. I'm with the U.S. Forest Service, and I am the manager of our hydropower program in D.C.

MS. NATHANSON: I'm Stacey Nathanson with the National Marine Fishery Service, and I'm an

attorney.

MR. DACH: I'm Bob Dach with the Fish & Wildlife Service, and I work on energy issues.

MS. SMITH: Gloria Smith, Department of Interior.

MR. THANNUM: Jim Thannum, the planning director with the Great Lakes Fish & Wildlife Commission.

MS. MILES: Ann Miles of the FERC.

MS. McCOMMON-SOLTIS: Ann McCommon-Soltis, Great Lakes Fish & Wildlife.

MR. COX: Doug Cox with the Menominee Tribe for Wisconsin, an environmental specialist.

MR. HOGAN: Ken Hogan of the FERC. I'm in the office of managing projects.

MR. VANDLIK: I'm John Vandlik, attorney, small hydropower assistant team leader for the eastern region here in Milwaukee.

MR. FEDORA: Mark Fedora, hydrogeologist with the U.S. Forest Service, hydropower assistance team.

MR. McKITRICK: Again, just a short introduction of why we're here and some of the things that are going on. I'm sorry, Rich.

MR. TORQUEMADA: Rich Torquemada with

the eastern region hydropower assistance team.

MR. McKITRICK: I introduced myself.

Again, we're here -- we have scheduled two days of meetings. We had a public meeting which some of you attended yesterday and today a tribal meeting to discuss tribal concerns and issues associated with hydro relicensing.

As you see, we're co-sponsoring this meeting with people from the Federal Energy Regulatory Commission as well as the Department of Agriculture, Commerce and Interior.

The reason that we're brought together here as a co-sponsor is because of the Federal Power Act. The Federal Power Act is legislation that authorizes the commission to license nonfederal hydropower projects. Agriculture, Commerce and Interior have very special responsibilities under that statute or law and provide us conditions and prescriptions, and that's why we're working together here to solicit any comments that you may have today.

As far as the chronology of events and what's happened and what we're doing today and what will be happening in the future just to help us is we did issue a public notice September 12th taking

or soliciting comments about, is there a need for a new hydroelectric relicensing process.

Again, we noticed the meetings. These are the first in Milwaukee followed by Atlanta, Washington D.C., Bedford, New Hampshire, Sacramento, California and Tacoma, Washington. We're certainly interested in the comments today. They'll be entered into the record and be part of that.

Also, as you listen or talk today, if there's some very special things or additional things you'd like to put in the record, there's a comment period that expires December 6th. So if you could file any written comments with us on or before that day, that would be helpful, probably referencing the docket number for this so that we know exactly the response to that.

Following those comments -- that comment period we'll be reviewing those comments, having a public forum again and then putting together the comments into a notice of proposed rule-making or notebook by February of 2003. Following that we'll have, again, some regional meetings that people can sit down with that notice of proposed rule-making so they can look at the proposed changes and any regulations for hydropower

licensing and discuss that with us and make changes in language to make the whole notebook better, so we can look at that.

Those meetings will be in March and April of 2003, and then our hopes are to have a final rule before the commission by July of next year. There is a handout on the table that you may want to get a copy of this, if you haven't already, that kind of explains what we're doing.

Quickly, the agenda today I think is fairly flexible, and I think we've discussed some of this. We'll have a short presentation from Tim Welch just kind of talking about why we're here. Mona will explain briefly about the interagency hydropower committee proposal for changes.

You have in the notice -- or if you got the blue handout, there's something called the NRG or National Review Group proposal. That's explained. Those are two written proposals that have come to us as far as changes. What we're looking for is additional comments, additional ideas to refine this or change these and make the licensing process hopefully more efficient.

Maybe we can have some sort of informal discussion after that to air concerns and then just

proceed throughout the day with as much time as we need. Tim.

MR. WELCH: I just have a few slides here just to sort of give you a little road map of our journey and sort of how it's brought us to Milwaukee today. Back in 1993 the commission received about 157 license applications for relicensing. So needless to say, we were inundated with applications, and I don't know if some of you may have been involved in some of the projects here in Wisconsin back in 1993.

As you may or may not know, when you file a license application, you do so two years before the license expires. Well, unfortunately, for a myriad of reasons very few of the licenses actually got issued before the previous license expired which causes them to go on annual licenses.

And so I'm sad to report that even some of those applications that we got back in '93 are still pending at the commission even today. There are still a few more lingering. So we learned -- I think we learned a lot of valuable lessons during that time period from 1993 until now.

Some of the things that we learned were a lot of times licenses came in and the applications

were incomplete. There was information needs. Applicants had to go out and do studies that were ordered by FERC because they hadn't done them during the prefiling period. There was some projects that hadn't received their water quality certificates from the State. There was a whole myriad of reasons. There's endangered species consultation going on. And so I think you can appreciate that the hydropower licensing process is fairly complex.

There's a lot -- the Federal Power Act allows for a lot of different agencies, state, federal, sort of all to come together, and you can imagine how complex that can be. So the first thing we decided to do was, well, at least let's get together and see how we can do some administrative reform so we can at least communicate better and understand how each other's processes work.

So we tried a series of administrative reform efforts, and one of the first ones was the formation of the Interagency Task Force, the ITF, and that was FERC and Interior and Commerce and the Forest Service and some other agencies, EPA, Advisory Council, Historic Preservation kind of got together and produced a series of seven reports that talked about how we conduct VSA consultation,

recommendation on studies, a guide book on the alternative licensing process, the ALP. So I think we did some really good work here, and we got together for the first time as federal agencies and had these discussions on how we can work better together.

Now, parallel to that the industry hydropower -- some of the larger industry members' hydropower licensees, they also got together with the federal agencies at FERC through EPRI, the Electric Power Research Institute, and they formed what's called the NRG, the National Review Group, and they also produced a series of reports that gave guidelines to license applicants about how to better navigate the FERC process.

So there was these two efforts of administrative reform that went on simultaneously. Now, back last December Chairman Wood called together a hydropower licensing status workshop where he looked at 51 of the longest pending cases at FERC that were five years or older, and many of them were in that class of '93 that were still at the commission. Along with the federal agencies we tried to examine the reasons why those were still here.

So out of that grew some regional workshops with the states. We went around the country. We came actually here to Milwaukee, met with the states of Wisconsin and Michigan, and we tried to talk to them about how they can make their 401 water quality certification process sort of fit better with the commission's licensing process. So we learned a lot there as well.

The resource agencies have also been through some administrative reforms. Most notably, Commerce and Interior came up with a system called the MCRP, the Mandatory Commissioning Review Process. That's very similar to the Forest Service's 4-E's, a public process whereby before they filed their mandatory commissions with FERC, they also send them out for public comment.

And so they get them in the public forum, they get comments, and they may modify their mandatory commission based on those comments. That was also a very successful effort by some of the federal resource agencies.

So why are we here today? Well, the administrative reforms are great. They did a lot, but they weren't quite enough. So now we're taking the next big step forward which is regulatory

reforms actually looking at the commission's current regulations and coming up with a better way of doing licensing. So this -- today we begin our new journey in the regulatory reforms.

What we're looking at, as I said, are improvements to the current regulations that are needed to reduce the time and the cost of licensing while continuing to provide for environmental protection and fulfilling our state and federal statutory responsibilities and our Indian trust responsibilities as well.

We're bolstered by the National Energy Policy that came from the White House, and that encouraged agencies to work together to produce a clean and efficient hydropower licensing process.

So Ron talked about the September 12th notice which is the reasons why you're probably here today, then notice provided an opportunity for discussions through public and tribal forums such as this. As Ron mentioned, we're going to -- there will be five others around the country that will provide written comments and recommendations on the need for and structure of a new hydropower licensing process. Those are due on the 6th as Ron mentioned.

The notice also includes the Interagency

Hydropower Committee proposal which Mona will be presenting here in a moment which was the next step after the Interagency Task Force, the sort of son of ITF, the Interagency Hydropower Committee.

The NRG, the other group, the industry group, took on some nongovernmental organizations as a well and continued their work as well, and they have come up with a proposal as well that it's in -- it's also attached to this notice. Unfortunately, we don't have an NRG representative here today to present that to you.

The notice also included nine specific questions that focused on various aspects of the licensing process that we want people's specific input in. And those questions sort of go to these discussion topics that you see here on the wall. Questions about study development, settlements, time period, coordination of state agency and FERC processes, and very importantly, a relationship to some of the existing licensing processes that you may or may not be familiar with, but of course, the traditional which is the one that we've had for quite some time and then the newer process, the alternative licensing process which is a more collaborative process.

So we're sort of asking the question, should those two processes be retained and a new process be a third? Or should this replace one or both? And that's another question that we're asking. So that's our journey. That's what brought us here today, and I'll turn things over to my friend Mona.

Are there any questions about how we got there? Ann, I think you're the only one that hasn't heard this.

MS. McCOMMON-SOLTIS: I don't have any questions.

MS. JANOPPAUL: If you happen to get a copy of the blue book presentation, you might want to turn to that and open it while I'm talking. There's something called attachment A in there. It's about 14 pages long. And I just want to point out on the last printed page there's my name and e-mail address as well as Bob Dach's and representatives for the other agencies if you want to contact us and ask us any questions later or if you want to e-mail us your comments that you end up sending to FERC, that would be great.

And then after the end of that is a multi-arrow drawing, a shuttle wiring diagram which

might be a good thing just to look at to draw big circles around to help you go through the presentation this morning.

As Tim mentioned, after we had this Interagency Task Force which was mostly senior departmental-level representatives at a political level and we did what we could as far as agencies working together for administrative reform, we wanted to continue that effort, but there was a change of administrations, and we took a little break and we came back, and we still had a number of issues that we wanted to address.

And as Tim mentioned, we re-formed as the Interagency Hydropower Committee, and we worked more at the staff level, and we worked so far mostly in D.C. at the staff level with those who are pretty familiar with licensing problems. Everyone up here and including some people out -- Ann and Stephanie have worked on this committee. We've been mostly directed by staff people at the agencies of Interior, Commerce, Forest Service and the FERC.

I'm going to go over a little bit the makeup of the committee. I'm going to talk about the objectives of this proposal. It's called the IHC proposal, but actually we have a number of

issues that we're considering, and this is just the one we're bringing forward at this time in this rule-making.

I'm going to go over -- break down the proposal into four areas, and we can talk about those that's simulated to deal with the different parts of licensing. I'm going to tell you what we expect this proposal to accomplish or what our vision is about it. As I mentioned, working on the committee on pretty much a weekly, if not a daily basis, we've had staff from the FERC, Agriculture, Commerce and Interior and also working with us have been staff from the EPA and CEQ including the White House Energy Task Force which was formed last year by a presidential order, also the advisory counsel on historic preservation. But the mainstays have been FERC which is the lead, the license issuer and our agencies which have mandatory conditioning authority, that is we can -- we are required to submit conditions to FERC under the Federal Power Act for the Land Management Agency, Forest Service, BIA and BLM were required to submit conditions that will protect the reservation but still allow the hydropower project to exist on federal lands. And then Commerce and Fish & Wildlife Service have the

ability to require fishways or fish passage facilities and accommodations.

So since we have this ability, we thought we'd have a most productive relationship with FERC. So that was how the members basically were chosen. The objectives of the proposal is to improve coordination among FERC and federal agencies and eventually states and tribes. We wanted to eliminate duplication of processes. We wanted to have a more efficient -- that goes back to what Tim talked about -- making licensing faster, less expensive, clearer.

We wanted to expedite implementation agreed upon measures. Tim mentioned that sometimes licensing takes a long time. And when you stay in those annual licenses, you stay under the conditions of the old license. You don't get the new license in place and the new conditions that you're seeking. So we all have a reason to get on to the new license.

Reduce overall time and cost of the licensing process while ensuring environmental safeguards. That's a key in both our interests, each agency's interests and as directed by the National Energy Policy. The President plainly said

that he was interested in a more efficient hydropower license but while maintaining appropriate environmental review of protection.

The first part I'm going to go over, and again, if you want to get out that diagram and just draw a circle. The first grouping of arrows covers the advanced notice, and that would be -- that's a new item, and that would be from the FERC to licensees about the upcoming decision regarding whether they're going to relicense a project or not through scoping, and the final study plan is proposed by the licensee and is adopted and issued by FERC.

The next part would be a study dispute resolution process. If any of our agencies had a dispute with FERC about the final study plan, that would allow a resolution and certainty going forward for all of us. Then the study period through the filing of the draft application by the licensee with the FERC, and then finally, what is now known as the actual licensing process with two kinds of opportunities for NEPA, one where you would go directly to a final NEPA document and another one where there would be a draft NEPA document before going to a final. So we have a little different

process for both of those.

The first part again, this would be a new thing, an advanced notice of license expiration from the FERC to the licensee along with some guidelines for what they should be including in the license application and what form it should be taking. We would all have earlier involvement than we have now of both the agencies, and FERC would have earlier. Instead of developing what you may see now as an initial consultation package or initial consultation document, it would be a new form.

The applicant would develop a NEPA-like document including preliminary study plans, and the commission would initiate the licensing proceeding earlier than it does now. There would be some formality well before the application was filed.

Scoping. The commission would issue the scoping document based upon the applicant's prescoping document, and the commission and the applicant would hold scoping meetings jointly. This has been done in a few of these alternative licensing processes, and it seems to be working well and seems like a good thing.

Development of final study plans.

Again, after we agencies and other stakeholders have stepped forward and participated in scoping, it would be up to the applicant to make the decision about the final study plan submitted to FERC.

If after FERC takes this plan and does its own evaluation and any of our agencies have a dispute with FERC and still would like to have the licensee conduct studies that are not included in the final study, we've come up with a dispute resolution process for ourselves.

The panel would consist of three experts in the technical area that the study would be in, one from the requesting agency, one from the commission, and a neutral third-party expert.

We would have worked with you and the licensees and others to establish criteria for studies to determine when there was sufficient information existing or when a new study needed to be done, what were the study plans and designs required. And eventually the panel would issue a set of findings. Were those established criterias satisfied for the commission to make a decision? So the commission still would retain authority about making that decision about whether to require the study or not. It would have a recommendation of the

panel one way or the other. From there on, if there was a change to the study plan, that would be finalized and a scoping -- second scoping document would be issued.

Then we get on to the study periods from the draft application. If you'll look at the NRG proposal, they talk about one season. Some of us are concerned about that a little. You never know when the weather is going to go bad or a study goes bad. So two seasons is considered comfortable. We have an annual review. If there was a problem with a study, if it didn't provide the information needed, we may end up having a dispute resolution.

And then final review, was the information collected? Was it made available to others? Was the information sufficient to develop the mandatory conditions or nonmandatory recommendation from our agencies?

Finally, onto the draft application. Again, instead of some other format, the licensee will be submitting the environmental section in the same format as the commission's NEPA document.

And then the last section is the actual, what we call, the licensing part now. We'd still have -- the commission would still issue a notice

of interventions, comments, recommendation, terms and conditions. As I mentioned, the commission is moving on to the option of track B where if you have an application come in, particularly if it's got a settlement or if it's not a complex project or if there's general support for the application, you have the option of moving on right to the final NEPA document.

So again, the staff got together and felt that this was -- thought this proposal was a very fertile area for us to avoid duplication in the NEPA process, to have early identification in resolution of disputes at least among federal agencies, to set time frames for all participants, concurrent filing of agency conditions. Sometimes now Commerce, Interior and Agriculture will file at different times. This provides that we all file at the same time. And develop adequate information for settlement because we do encourage settlement, and we're hoping that this proposal will allow for more settlements.

MR. TORQUEMADA: We certainly have time to clarify anything if you have questions right now. We've got a much smaller group than yesterday. So like Ron said earlier, if you want to keep this

somewhat informal -- anybody have any questions or need some clarification on the presentation?

MS. McCOMMON-SOLTIS: One time line question. On your diagram, your boxes, would it be fair to draw an arrow between the first box where FERC sends a letter to the licensee and the second box where the applicant sends FERC its notice of intent of three years? Is that how that works, that FERC sends something eight to eight-and-a-half years before --

MS. JANOPPAUL: (Nods.) Would anybody else from the IHC cadre like to make a comment about our proposal? Since the NRG representative isn't here, I'd like to say that it was actually -- it wasn't a total surprise to see the NRG proposal was quite similar to ours. In fact, it was pretty gratifying that the two groups independently came up with a very similar proposal, saw that what some people have called one cycle NEPA and better integration of federal agency processes was a very fertile area, and I think certainly the commission thought so in seeing two pretty similar proposals come in, one from their staff and other federal agency staff, and one from a very integrated forum of environmental interests, industry interests as

advised by others.

At times the National Review Group did reach out to tribal representatives and also on the Interagency Task Force we did have a federal advisory committee, and there were some tribal interests represented on that as well.

UNIDENTIFIED SPEAKER: You just answered my question. It was going to be how were tribes involved in the process at IHC or NRG, or were they involved in both, and if not in both, why not. I have my own ideas why not, obviously, and if they weren't involved in either, why not. You just spoke on that.

MS. JANOPaul: My recollection -- and if somebody else remembers from the Interagency Task Force differently -- is there was a regular representative from the Warm Springs Tribe out in Eastern Oregon who was tied into the Columbia River Intertribal Commission. I'm not sure that we had any representative from the tribe of the Eastern U.S. at the FERC '93 round-table which followed the 157 license applications that Tim talked about. There was a tribal representative there from the foundation in Boulder, Colorado. It's called -- I'm drawing a blank.

MS. McCOMMON-SOLTIS: Native American Rights Fund?

MS. JANOPaul: Yes. I don't recall her name. There was four representatives, a state representative, a resource representative, et cetera. So she was one of four included at that time. The NRG made some effort to include tribes, but there was an expense involved, and so they stayed in touch with them.

For the Interagency Hydropower Committee we not only have been just mostly the three mandatory conditioning agencies and FERC, we have not had that much of an opportunity because we were on a very tight time schedule to even go out to our own field people. So this is a real good opportunity for me to talk with Forest Service people out in the field, and it's why we are particularly holding these forums.

I've never seen a FERC process like this where there's so much front-end effort to bring in tribes and the public, and this is it. This is our chance because we do want to make this work with your interests as well. Gloria, Bob, you want to add?

MS. MILES: Ann Miles of FERC. As Mona

said, one of the reasons we're having the one-day sessions with the tribes is that for this IHC proposal, the NRG really hasn't had a chance to comment. So we really wanted to have a full day of discussion with the tribes and us come to you.

The other thing is one of the sessions, the one that's going to be held in Washington D.C. on November 7th, it's on the schedule, the chronology of the licensing process, we have and are looking still to find some tribal representatives who will come and speak to the commission themselves. The commissioners will be there that day.

So I know we've called and are working on trying to get tribal people. I'm not sure we filled the slots. We've got tribal representatives on two of the panels. So if you have an interest or you know someone who might, let us know. Because the commission itself does want to hear what you think about this and how you could best fit into the process.

MR. DACH: I just wanted to say with respect to various constituencies including the tribes, we're not trying to purport that we felt that we've done any sort of good coordination

outside the federal agencies yet; we have not. This whole process is for that. So where the tribes for the most part have not been involved, this is what we consider the opportunity or best opportunity to have the tribe state this proposal or any other proposal and just redline the heck out of it.

Because the idea is to try to make these things work for everybody. And we haven't had the benefit of that input yet.

So we very much are soliciting comment and input on that to see how that could work best from the tribe's perspective. We know that with the other processes that are out there, we are still not sure whether or not this is going to be a third that's going to replace those. But sort of the thoughts I'd like to leave folks with is that this is an opportunity to create the perfect licensing program. So to try to do that from your perspective and show us how to mold this in order to make it work from your perspective would be very helpful.

MS. JANOPAUL: This proposal is clearly a work in progress. It is not final. I made that clear to my own people out in the field who have some comments on it as well. I don't know about redline the heck out of it --

MR. DACH: We think it's perfect.

MS. JANOPAUL: Like the ITF agreements, it's what we at this level -- what we have gotten thumbs up from from the next level of management and our agencies that, yes, they can agree that we can go this far in coordinating. But certainly, the next step is what we're doing.

MR. TORQUEMADA: I don't know -- again, we have a small group -- if Jerry, I know you came in late, if you had a formal presentation or wanted an opportunity to add, and we have three speakers. Do we need to set up anything, PowerPoint or anything like that? We can get into the presentation then if you'd like to speak. I don't know, Doug, or Jim, or Ann, if you have any order you want to go in.

MS. McCOMMON-SOLTIS: Can we just do it from here?

MR. McKITRICK: Sure, if we can just give you the mike.

MR. TORQUEMADA: And also, Jim, I didn't know if you intended this to be submitted for the record.

MR. THANNUM: Let me see if I've got my note.

MR. COX: Doug Cox from the Menominee Tribe of Wisconsin. We really didn't today plan on giving a formal stand-up presentation to you folks. The general process for us are open discussions for tribes, that seems to work better in my experience with both rule-making issues as well as having opportunities in meetings like this in either round-table format or across-the-table format.

But that said, I have a couple things I'd like to go through at least very quickly. Menominee's experience, first of all, and some of you may be well aware of Menominee's experience and the hydropower project that we're involved in known as the Shawano Project No. 710, the license expired in 1977. At that time the tribe had just been restored from termination status -- I shouldn't say just, about four years into having been restored from being terminated. There was some issues related to that that caused problems down the line through licensing. I'll explain that a little bit. But '77 was expiration which I had nobody at that time to be involved in the process.

Even looking at it today our involvement is limited by the tribe's own limitations through things like staffing and funding which will remain

as issues through this process that I think FERC and the IHC have to consider. It was a 20-year process. The new license was issued in 1997. Through that time a number of things happened.

During the initial process, the tribe wasn't even recognized as being in existence much less being impacted. Only through the draft environmental assessment was the tribe able to point that out to FERC that, yes, we are a tribe, and yes, there are federal lands impacted here. We managed to get Interior involved in the solicitor's office, had them -- the tribe paid for a study that was conducted by the Corps of Engineers that determines the impacts on the reservation lands. That was a tribal class, and again, we had the solicitor's office point that out to FERC that Section 4-E does indeed apply here, and this didn't happen until around 1992 or '93.

So from 1977 until 1992 -- and most of the project relicensing process was centered around 10-A issues, not 4-E issues. After that point, Interior began assisting in development of 4-E conditions with the tribe involved to a very active extent which again was very costly to the tribe, and it still is today costing the tribe dollars through

the process.

But as I did mention, in '97 license was issued. At that time before any conditions were filed, only days before the license was issued, FERC's issuance of that license contended that Interior's 4-E conditions were filed untimely and even though the agency's authority mandated conditions that would be filed by the secretary on mandatory conditions, FERC ruled the conditions were filed too late and only considered them under 10-A which left the tribe with inadequate license conditions. We've appealed. We're in the middle of a mediation process currently, and there's some legal issues there that obviously I can't expand on. But that's where the process is at.

So we're still in the process that started in 1977. Again, the license is issued, but we're still in that process, and our experience in that process is going to reflect some of our comments here today. And I understand all the processes have changed since then. We were under a traditional licensing process. We didn't have an alternative licensing process available to us at that point, although I don't think ALP would have worked any better than TLP did. That's just my

opinion.

But the new process that we have available through these two proposals looks better than the process we were under. There were obviously problems with it that we're through with the problems today.

I want to get on a couple things though if I could real quick. The tribe will be submitting formal comments, written comments in accordance with the proposal. Additionally, we have comments that we'd like to talk about today. Some of those things range from timeliness concerns, time line concerns in the proposal. We have concerns about things like reopeners. We have questions on how the proposal would address reopener issues, how it would address exemptions, if there are exempt projects out there that have reopeners in them or will be reconsidered for any reason, how does this proposal affect those.

We heard this yesterday from the groups that spoke about the process -- the one-size-fits-all issue. The tribes -- our comment would be, would either of the processes be available? And if this process were implemented -- and I apologize if these sound more like questions than us having a solution, but that's the way I

intended to come here today and give these. So the question is, would there be processes available?

Yet, if one of these are chosen, would there be an opt-out option once you start in the process to go back to traditional licensing or alternative licensing?

The NEPA analysis part of the proposal, I think we need to feel assured that FERC is within the guidelines that we're allowed under NEPA. We need to be assured that all aspects of NEPA are followed. One of the concerns I saw was the AB portion where the draft document would be the starting point and nothing -- it appeared like nothing before that, and I think it was in part B that the draft NEPA document would be proposed. Those sorts of things gave us concern that NEPA -- we need to be assured that NEPA is being followed throughout.

There's data issues related to study language and again, we can expand more on them because I know the folks in GLIFWC will have some of the same concerns that we had on data issues. For example, in prescoping reference gaps, information gaps. Our experience with information gaps and getting different -- in data collection when we

identified information gaps, we have a structured process usually that we're following and that structured process includes things like data quality objectives.

So we follow a data quality objective format that's outlined in criteria that's identified through EPA. And again, this is a lot of quality examples I'm giving you. But this kind of thing can be applied to -- I believe can be applied to the study conditions you're identifying in the proposal, and there needs to be more specific approved data quality objectives. That may be something that could accomplish that, as well as in the study plan development itself. Tribes are, in our data collection efforts, required to develop quality assurance project plans, and that may be something that you should look at in study plan development, maybe in criteria.

And again, we'll talk more about those as we get a chance here today. Once study plans are implemented, quality control is a concern, checking quality control and study plans and how our study -- how the control is identified and again, that may be something that we may be able to accomplish in quality objectives.

And generally, tribal issues -- again

I'm summarizing my points. I'm sure we're going to get back to these as we go. General tribal issues.

The importance of tribal sovereignty needs to be identified up front here and recognized, and I realize in the presentation you identified it, but in the proposal it's not identified heavily.

Tribal sovereignty is, up front, of most importance in the tribe's efforts and its process. Again, in our experience it was a real struggle educating FERC as well as staying involved in this process about tribal sovereignty, trust, responsibility. Those two issues are really large on the forefront of the tribe's efforts to stay involved with the agencies and the process of relicensing, license applications, permit applications, those issues in any country are huge today and just responsibility leads that list with most of the agencies. And again, we'll hear more about that as we go.

FERC has to recognize, the IHC proposal has to recognize tribal authorities. The Clean Water Act issue is another large one. The tribe's ability to regulate and implement water quality standards exist. There are a number of tribes in

the country with improved water quality standards currently. And those improved water quality standards include 401.

So that I think we heard yesterday from the licensees that this is a huge issue for them with states that if we didn't hear anything about tribes, and that could be a large issue for this process, as more tribes receive approvals, they implement water quality standards, and more tribes will receive approvals in the country as days go by and years go by.

Historic Preservation Act issues.

Again, I know you have that in your group. That should be pointed out in the proposal like the historic preservation officers in Menominee, for example, hazard tribal preservation officer, that person holds in the State of Wisconsin the same authority as the SHPO. And any issues on cultural resources relating to the Preservation Act, NEPA, those all go through -- that person has the same authority as the SHPO. So that's an authority that the tribe has.

Tribal resource management plans -- the tribe has -- Menominee has a number of those existing. There are examples of fishery source

management plans we have existing, waste plans, cultural resource management plans and also tribal ordinances within the boundaries of the reservation.

Tribal ordinances have the ability to regulate, within the boundaries, issues like hunting, fishing, trespass issues. Those things all apply within the boundaries, and the tribes have those authorities.

And briefly, my last point with my summary is cost effectiveness. You heard again yesterday from licensees about cost effectiveness being an issue with them. This is a very large issue to tribes. As I mentioned previously, we're still bearing costs from a project that the license expired in 1977, and we're still bearing costs from that issue today.

Currently, the tribe has accumulated costs of up to about a half a million dollars in this process, and that's the tribe's cost. There's additional federal costs that have been accumulated in that project also. DOI's involvement, solicitor's costs. DOI had a contractor come in and help them with development of 4-E conditions for that project. Those costs are there that weren't even utilized in 4-E -- the 4-E submittal.

So that's a very important issue, and we just wanted to make that clear that it's not -- we're bearing a lot of costs here, and they're very costly to the tribes who in most cases are a lot less resourceful than the licensees are. We just don't have the resources available to us, and in the long term there's no stability there either. But economic structure of the tribes just aren't very stable and who knows, five, 10 years from now, where we sit. We're not sure. That's my summary comments. So, thanks.

MR. McKITRICK: Thank you, Doug. Just one quick thing. Did I understand that specific project, is it still pending? Is it still in court, or where do we stand with that?

MR. COX: The license was issued in '97. We appealed the decision. We're in mediation. The Court recommended to the parties to try to mediate. We've been mediating now for over a year. That's where it's at.

MR. McKITRICK: I guess my -- I think you framed some excellent questions for our discussion as we go through this. If it's still pending, the specifics of that case, if they could be made general because we don't want to interfere

with the process or change that in any fashion.

MR. COX: A 4-E was filed and the decision and the license was rendered, so those kinds of things we can sure talk about. So specifics to our appeal, no. But the 4-E things that we developed, we worked with Interior to develop these conditions, so those kinds of things we can sure talk about. I know some of the issues I framed are going to be overlapped with GLIFWC, and we don't want to take anything away from GLIFWC.

MR. TORQUEMADA: Thanks. Jim or Ann?

MS. McCOMMON-SOLTIS: I'll go next.

MR. TORQUEMADA: I'm trying to capture like we did yesterday, the same thing. We have the discussion topics, and then we'll come back and touch on all those things and be thinking specifically how it would apply to the IHC or the process that's proposed for a rule, and that's going to be real productive for the record.

MS. McCOMMON-SOLTIS: I guess what I'd like to do is just tell you a little bit about who the Great Lakes Fish & Wildlife Commission or GLIFWC is. I'll state what we do, in case you're not familiar with our organization, where we operate and then just give you a couple sort of general points

about kind of any process reforms, and then we can get into some of our specific comments as well.

GLIFWC is an off-reservation natural resource management organization. We're made up of 11 Chippewa tribes that have reservations in Minnesota, Wisconsin and Michigan. And actually, if you look in the back cover of this booklet that I think was in your packet, it shows where the ceded territories are. So we assist our member tribes with hunting, fishing and gathering activities off the reservation. Occasionally, we will help our tribes on reservation issues, but that's only if they specifically ask us, and we specifically get authority to do that.

The treaty areas from 1837 and 1842 ceded territories cover about the northern third of Wisconsin and extend into just a little piece of the western side of Minnesota.

In those two ceded territories there are 87 FERC licensed facilities, and needless to say, management of those facilities impacts a variety of resources that are of interest to our member tribes including walleye, other fish species, wild rice, and impacts to the ecosystems that support those resources.

Generally, of course, FERC like all federal agencies has a trust responsibility to make decisions that are in the best interest of the tribe and to protect those treaty resources and fulfill the obligations that were set out by the U.S. and the tribes in the treaties that were designed.

Our tribes' treaties were designed to provide a way for those tribes to provide access to the natural resources that support their way of life which is tantamount to their religion. So as a part of the trust responsibility, certainly there are procedural government-to-government consultations kind of things that need to take place. There are also substantive decisions that FERC can make that will help to implement those treaty rights and ensure the protection of those resources.

In the case of relicensing, I think one of the main obligations is to -- for FERC to help the tribes ensure that they have an opportunity to effectively and meaningfully participate in the process. And that goes to I think both time lines and resources. Clearly there's a wide variation among tribes in how much -- how many resources they have to put to these kinds of relicensing. We have 87. There's no way. We're not going to be able to

do 87 relicensing processes.

But to the extent that time lines are shortened, I think tribal participation will diminish because it takes time to gear up. And it takes time to get from the chairman's desk on to the right person in the natural resources section's desk. It may take time to go to a tribal council to get the right authorities to be able to participate in the first place.

So there are a whole variety of things about the time lines that we can talk about. I don't think anybody is suggesting that 25 years of annual licensing is a good idea. We're certainly not saying that. But I think the time lines kind of have to be looked at with regard to the unique situation that the tribes are in. And one other, I guess, situation where that arises is when they need to work through agencies like Interior for 4-E conditions. Those sort of -- building those relations, those interactions, coming up with 4-E conditions, for example, that the federal agencies are comfortable going forward with, that all -- that's a process and it takes time.

In terms of resources, some tribes have more resources than others. And as I said, the

quicker you go, the more resources you need to be able to participate. I think in addition, resources within FERC to help FERC reach out affirmatively to tribes and knock on someone's door and let them know when it's time to come to the table would be extremely helpful.

The GLIFWC, one of the things we've been doing actually over the past six or eight months is we got a grant from the administration for Native Americans specifically to look at FERC issues. Because we realized for a long time that we keep getting these notices, we keep getting these notices, and we're not really so far dealing with them very effectively.

So one of the things we're doing under that project is to gather information about what resources are found around FERC licensed sites. Is there wild rice there? Is there walleye there? Have we harvested there? What management activities are we doing there? And then to evaluate some of the avenues for tribal participation in relicensing, and then for us ultimately to be able to kind of prioritize which projects are the most important for us to get involved in.

Going back to something I said a little

bit earlier, I think the process needs to be flexible in that tribes need to work with federal agencies for 4-E conditions, but there are also some times, for instance, in the case of GLIFWC, other government-to-government processes that have to be respected. For example, under the federal court stipulations when the state wants to take a management action or a recommended action that would impact wild rice, it has a responsibility to consult with GLIFWC and the tribes before it takes that action.

And so one of the concerns as we looked at the time lines was to make sure that that sort of side process has an opportunity to do what it needs to do and then feed into the FERC process. And so that's sort of just one example. We also have technical working groups that deal with fish issues, and so there are other sort of government-to-government relationships and structures that are in place that will need to be respected and then fed appropriately into the right slot in the FERC process.

That's kind of it for the general comments I wanted to make on GLIFWC's behalf. But I did also receive some comments that I wanted to pass

along from the Fond du Lac Tribe. They're located in Western Minnesota -- Eastern Minnesota, sorry. And they were unable to be here today, but they did put together some comments, and they wanted me to pass along a couple points.

The first one of which -- and I think these are consistent with what we have said as well is that the position of tribes within the licensing process needs to be clearly and firmly established. They had a situation where it took a really long time, and I think Doug said this too, to sort of educate the applicant and everybody involved about what the position of the tribes were, where they fit into the process. And they had some authority and some standing to be involved. So that was kind of -- that was a struggle for them.

They talk about the protection of trust resources and how important that is and that the federal government and agencies need to be aware of and ensure that the trust responsibilities were fulfilled. They also had some concerns about sufficient time and resources being available for the tribes and agencies to fully assess these potential environmental impacts.

They've got a case where they have five

upstream storage reservoirs and four downstream hydroelectric generating facilities. So it's a very complex project, and it took them and the federal and state agencies involved quite a while to really determine what the environmental impacts were.

They'd like to make sure that FERC and the other parties recognize the substantial capabilities that some tribes now have in natural resources and environmental-protection management and research. They feel that the determination and evaluation of fair annual payments for 10-E lands within tribal boundaries needs to continue to be considered in the relicensing process.

I'm not sure. That's really up for debate. I imagine it would be. But they feel that hydroelectric projects that encompass more than one storage reservoir and/or generating project should be evaluated as one complete system and the potential impacts between the upstream and downstream dams and reservoirs.

And finally, they are concerned that some of the -- that when there is a search for a remedy to an impact, commonly those remedies will come from kind of a limited standardized list. This is what fixes that. And they would like to see a

greater willingness to consider alternative and innovative solutions to some of these impacts. I guess that will do it.

MR. McKITRICK: Thank you. Jim, was there general comments that you wanted to make?

MR. THANNUM: One of these comments are tied to what I mentioned before, questions and issues. But first of all, I'd like to start out by saying I got a call this morning from George Beth. He ran into car problems and is he stuck in Madison. When I talked to him this morning, he asked that I bring up a couple of issues for discussion today.

One of the questions that he had is once FERC establishes the conditions, who was responsible for monitoring and enforcing those conditions? Another thing that he asked me to bring up for discussion was how are penalties or violation conditions established in the FERC licensing process? And then if the company disputes for reconditions after FERC's rulings, what are the company's options?

And there was a situation now with the wild rice restoration. I believe the tribe seeks about 3,000 pounds of wild rice. The company, even though it received its 40 conditions in February

basically ignored them, held the water levels higher than it should have been.

MS. JANOPAUL: Is this still an active case?

MR. THANNUM: I believe so.

MS. JANOPAUL: I kind of think that's a problem. I was just looking hard for a Forest Service attorney who I see has conveniently ducked out of the room.

MR. THANNUM: He just asked me to bring this up. So if that would be best to -- I could pose those questions to that attorney.

MS. JANOPAUL: I certainly think the earlier questions about responsibility for monitoring enforcement penalties and violations, I think Ron gave some great advice earlier about not talking about cases that are still kind of undecided.

MR. THANNUM: If we could maybe talk about the first two.

MS. JANOPAUL: I think hypothetically.

MS. MILES: Ann Miles. We certainly can talk generically about monitoring, penalties, those kinds of things. But I think especially with a contested case we want to stay away from the facts

of that case.

MS. JANOPAUL: Sorry, Jim.

MR. THANNUM: That's okay. Those were just the issues. The first two, if we could address those. One of the questions we had was -- it's our understanding now that when a FERC licensee undertakes a removal license, they look at various management plans and identify within their process how the license will be affected with the management plans.

One of the questions we had were, how do the two processes with the IHC or the NRG propose to integrate that flowchart? What phase is that going to be addressed in?

MS. JANOPAUL: I'm sorry, what phase is --

MR. THANNUM: When will applicants be taking into consideration the various management plans from the agencies? That's one of the key questions I had. Where in that flowchart will that occur?

MS. JANOPAUL: When would you propose that?

MR. THANNUM: I guess one of the things it goes to is that phase, the early phase. If

you're identifying the issues to me, it would have to occur there. And I also know that you've got a number of different agents here and other documents that have to be done. So that goes back to the point with the 60-day aspect as well. And then the follow-up question within step three of that process is that the responsibility of stakeholders to identify those management rights, where does that responsibility come in?

Then the other thing I'd like to know is is there any -- with a comparison of those systems, how would that also tie in with the tribal management plans? A lot of tribes have developed greater resource management plans. They've got other fisheries, plans and so forth. So there's a similar question that goes to that where, at what point do the tribal management plans have to be considered within the process, and are the time frames going to be there to communicate those issues?

Another area I wanted to talk about was in your packet you've got some GIS maps, and I've got to refer to map number one. One of the things we wanted to do was try to get a sense of a number of GIS sites in the territory. The overview is what

does the future hold?

To give you a good sense from a preliminary analysis, we've got 25 FERC licenses due in the year 2026. So that comes back to driving home the point of the type of resources and try to look at that with FERC sites in that perspective. Then it also leads to the question, does the Bureau of Fish & Wildlife Service and Forest Service have adequate resources to assist the tribes in identifying and communicating those concerns given that 60-day period?

So in the year 2026 we're starting this process, and you've got 25 applications. And are we going to have the resources to effectively address that? That's a big concern.

Another issue that I'm concerned about was -- Ann alluded to this -- but it drives us home further is the shorter the time frames we're meeting these, the more resources we're going to need. So is there going to be a direct relationship to the staffing? If you're trying to deal with 25 licenses in a one-year period, they're going to need a larger amount of staff, not just for GLIFWC's participation, travel participation, Fish & Wildlife Service, Forest Service, and how that will be

integrated. So that was one of the key things I wanted to bring up.

The other issue I'd like to bring up is FERC studies. You've got another map, GIS map number two and as Ann alluded, in the project, one of the things we wanted to do was look at wild rice. Where have we had the seeding process? Where are we doing studies? What is the background information needed for that? And one -- the issue of studies seem to be paramount in yesterday's discussion. It was raised, the cost, the accusations by some of the agencies contending that the studies weren't needed. It seems that the whole issue of studies were so important we decided to put in a dispute mechanism. So it seems a central focus of the whole process.

What I'd like to do is bring up Doug's point again too, is if the IHC has considered requiring licenses to submit or obtain an EPA quality assurance plan, because one of the things -- if you're expecting the tribes and the agencies to comment under the scoping process what are the type of studies, without having some of the specifics, what is the study design, what is the sampling, what are samples that need to be taken? If you're doing work, you got testing such as contaminants,

sediments. Are you going to have duplicates, spikes? There's a wide range of factors of quality assurance to really be able to effectively analyze, is a study adequate or not.

So I think that's one of the things the tribes have been working with the EPA, and we think we've learned from that, and it's a good process to think out exactly what you are trying to decide, and is the data you're collecting going to give you those answers?

Another thing we wanted to talk about is a concern about the time frame -- and that was alluded to a little yesterday -- for two years. We've worked a lot with our tribal elders and provide advice to tribal biologists. One of the things they've taught us is to be aware of the natural cycles that will occur.

For example, in wild rice they accumulated one good year, two average years, one poor year. So applying that back in the study designed in two years, are you going to have an adequate amount of scientific knowledge to really identify what's happening in that?

And then there's also a statistical basis. There's some fundamental questions, and I

think a lot of it would depend on the type of studies, how much information has already been collected. So I think that to set up these study -- a limit of two years and so forth is a concern because of the uniqueness of various resources. And we have wild rice. That might not be the case in the Northwest. So two years it might be fine. So it's one of the key factors we wanted to bring up for discussion.

Another issue we'd like to talk about was -- Doug alluded to this -- is the tribes have authorities to establish their own clean water regulations under the treatments of the state. And the group that was here yesterday, how many of those licensees are even aware of that fact? So there's a whole education process that's going to go along with this.

And pointing to your suggested topics, coordination, state, tribes aren't listening, that's an example. So I'm always thinking about federal agencies are more aware of tribes. You understand some of the authorities, responsibilities, but suddenly now we're going to be dealing with a lot of down licensees. They're unfamiliar with case law, the history. So it's going to be something totally

new to these people. So anything that FERC can do to facilitate that education I think will really prevent a lot of problems down the line.

The other question I had was if we're looking at streamlining this process, is there anything being contemplated in eliminating how many years an annual license will be issued? It's a situation that Doug mentioned, 20 years. Is that being contemplated? So I think that's another issue for discussion.

One of the things -- and I think it's important to try to articulate with you a little bit is why tribes are concerned with this issue. And we've got another map referred to as GIS map number three. And we are sort of looking at the statistics. Roughly six of our top 12 tribal harvest rates in Wisconsin are FERC licensed waters, and that accounts for over 25 percent of the tribal harvest. So it is a significant issue.

Another issue that's come to a head is mercury in walleye fish. I'd like to pass something out to you. This is an example of the type of information that we distribute to the tribal members. Methylmercury has been found scientifically to impact the development of

children. So what has occurred is we've been working with federal and state agencies to collect walleye samples and produce this type of information so tribal members can make decisions on where to harvest lakes and to go and identify lakes of lower mercury levels to feed to the children.

When we started this process, what we noticed is some of these lakes, the large ones, the Turtle-Flambeau Flowage, all FERC sites, all were red, meaning, high mercury levels. But on the other hand, we saw some lakes such as Pelican, they were blue. So the question became, why do you have some FERC sites with high levels of mercury and others of low mercury?

So one of the things we wanted to do is we did some literature searches. And one of the things we found out is there was three basic theories, four of them that relate to FERC management of water levels. First is when the levels basically of dry organic materials become wet, decomposition increases, then decaying material uses up the oxygen which creates methanation. That might be one of the key factors why the water level regulation might have a direct impact on the amount of mercury that's released in the ecosystem.

Another thought is methylmercury is formed in sediments in the backwater area and reservoirs by sulfur-reducing bacteria when you have the ice shifting or the flood waters. And the third is, once a sediment's dry, you get more oxygen ability to bind tight mercury. So what we wanted to do was try to find out more.

So right now the other thing we wanted to analyze was what is a variance? Get more insight into that. We looked at one of the sites, the Flambeau Flowage. We noticed there was a statistically different level of mercury that had occurred. And what the graph basically shows is that on some years we've tested mercury. For example, in the year 2000 before it hit point five parts per million, we had wildlife that could be consumed safely by women and children.

But in other years such as '96, there you're looking at a time period where you reach -- better yet, '97, fish as small as 12 inches would exceed mercury levels which you'd be able to harvest and safely consume by children. So the question became, why do we have these rapidly changing levels in mercury from a FERC site in wildlife from year to year? So we're undertaking a study to do that now.

We are taking water quality analysis and looking at some of the hydrology compared with the wetland's composition between four FERC sites of high mercury level and four with the low. But this is the type of work that -- going back to my point -- you try to do in two years is really questionable.

So we just want to give you some examples of the type of things that come from a tribal perspective, the concerns that are out there, and the type of information that needs to be developed. And what we're looking at is a database that we've got since about '96. So you're not going to be in a position to collect enough fish samples on the FERC site to analyze the mercury level and to indicate changes over two years. But that's all I have, and I just wanted to discuss some of those things with you.

MR. TORQUEMADA: One of the things you brought you up was discussed yesterday and that's sharing information. You just mentioned several studies that could be incorporated when we talked about criteria for judging what studies need to be done and what kind of past studies we already have. And apparently the tribes have a lot of information

that fits well into the process.

If there's no other formal presentations, we probably ought to take a break, and then we can discuss in the next 15 minutes how we want to arrange the rest of the day.

MS. JANOPaul: I think this clearly goes into our thoughts about what we're going to do about establishing criteria for studies.

MR. McKITRICK: We'll take a short break.

(Discussion off the record.)

MR. McKITRICK: The first thing that I heard was dealing with time lines. One of the first things that I think -- the first I heard was that maybe we don't want to be too concerned about shortening them, and how to integrate tribal concerns with the time lines that have been set up at least in the IHC.

So if there's specific things that you'd like to know or specific things that you can give us guidance on on how to change something to better integrate tribal input, that would be very helpful to us.

MS. McCOMMON-SOLTIS: Could I start out asking a question?

MR. McKITRICK: Sure.

MS. McCOMMON-SOLTIS: When is the first time under the IHC process -- and I'm sorry, I don't know this -- that tribes must be notified that something's happening? Is there -- I know that in the current process you have this preapplication consultation. I know that the tribes have to be notified then.

But in the new process, when is that mandatory notice? I read in some of the description it talked about encouraging the applicant to contact agencies and various folks, but I never picked up when that became mandatory.

MS. SMITH: We haven't said it yet, right?

MR. WELCH: We talked about it. I think it will be very similar, Ann. I think the problem with this chart, it doesn't have a lot of the details that's behind it. And when we put it -- when the IHC put it in here, we sort of had to keep a shortened outline. I think, if I remember correctly, and some of the IHC members can correct me if they remember something different, but the idea was this prescoping document.

There's two things here. First of all,

the prescoping document would be the applicant would be required to file -- to file that with the tribes, to send that to the tribes as well as the resource agency and state and federal personnel.

Now, the box that's before that -- which we lovingly refer to as box zero -- is this letter from FERC that would be sent out to the licensee. And it would sort of be like a heads up, like, you know, dear licensee, guess what, you know your license is expiring soon, blah, blah, blah. And it would also include sort of a list of basic information that most license applications would need, and it sort of would be a prelude of the types of things that FERC would be expecting in that prescoping document in box one. So that would be one thing.

Another thing it would include is contact information, state resource agency folks, Fish & Wildlife Federal Agency folks as well, and this is the part that escapes me. I don't remember if we said Indian tribes as well.

MR. DACH: In the prescoping document we gave we did not -- it's not mandatory, and you're asking if it would have been mandatory issues.

MS. McCOMMON-SOLTIS: I'm afraid if it's

not mandatory, they're not going to do it. Once we get into the deadlines, there's all kinds of opportunities for missing an important deadline and then being too late.

MS. MILES: So your suggestion is that it be -- the tribes be included on this list of people that need to be contacted in box zero.

MR. WELCH: That's what I was thinking as well.

MS. McCOMMON-SOLTIS: Kind of a heads up to tribes as well to say, okay, this is coming, get ready.

MR. WELCH: Now, typically under the old process we sort of -- the burden fell more on the applicant. The regulation now just says contact any tribes in the project vicinity or something like that, so we put the burden on that. I think this is something we'll just have to work out is how do we identify, and maybe the Department of Interior would give us assistance of how we would be able to identify the tribes that are affected. But that would just be something we'd have to work out.

MR. DACH: So I thought I heard you say something different right there at the end. It wasn't a mandatory requirement for the licensee to

contact all those folks. You would want -- is that what --

MS. McCOMMON-SOLTIS: In the current -- the reg currently works?

MR. DACH: No, talking about right now how you would change this.

MS. McCOMMON-SOLTIS: How I would change this? I would have I guess somebody -- I guess I wasn't thinking specifically whether it would be FERC or whether it would be the licensee. But somebody has to contact the tribes and tell them that this is coming.

MR. DACH: At that box -- at the -- zero.

MS. JANOPPAUL: Yesterday we had quite a bit of talk about early service list development, and if you send a letter out to the licensee, we've talked a lot about what's the appropriate role particularly for land management agencies, work projects, federal lands whether it be Indian reservation or service reservation.

We've talked about some kind of automatic involvement one way or the other. So if you have some comment about somehow identifying which projects you were involved in, maybe you

identifying them to the commission and then the commission having responsibility or the licensee's responsibility, that would be -- maybe it doesn't make any difference to you. But if you could put it in the context of this proposal, that would be great.

MR. THANNUM: We're including in -- box zero has a couple of important factors I'd like to bring up. One of which is when you're looking at program development for a natural resource agency, I counted over 25 in the year 2026. If I was the DNR, I'm going to want to know that too. So they're going to need the three years to gear up internally.

I think that's another important factor to consider in this whole process when you look at those time lines and what has to be done, then that early notice -- with the DNR and tribes, it's really going to be critical so you can develop your staff planning and resources for that.

MS. JANOPPAUL: We talked a lot about FERC putting various things on the website and seeking information on what should be in this form in its information packet to the licensee, and maybe it should be an information packet as well to agencies and tribes. I just have a question for

you.

I remember when Ann and I were out on -- relicensing out West and there were I think half a dozen tribes or so involved. We were talking about websites and e-mails and this and that, and there was a real concern that that would somehow impact tribal participation. And I've got to ask, is that an issue for you? We're doing a lot following 9/11 going to E-filing and things available on e-mail. And the mail is more difficult. So maybe this is nothing you want to comment on now, but this is --

MR. THANNUM: I'd like to make some comments. We were talking internally about that. I think the more you can put on the Web and use of e-mail is going to really -- for the tribes the sophistication is going to improve participation because what will happen -- we were talking earlier, for example, if I had a document, all documents, say, WordPerfect, Microsoft Word, I can do a word search. We talked about wild rice being a concern. So I can pull in that document. I can type in wild rice and go right to that document. The portion dealing with that, that's going to assist in my participation.

But on the other hand, if I get shipped two big crates of documents, I've got to go through them to find out where wild rice is discussed and what type of studies are done. So I think that there's actually more that we can do with e-mail, the more that can be on the Web. I think in our case it will assist in participation.

And also just the communication. When you start sending documents, and I realize the bureau has some internal problems now with e-mail and that will be solved soon, but it's a situation between our member tribes and the technical staff. I know when GLIFWC deals with the DNR, a lot of work is done with e-mail and those types of things. So I don't think that in our case that would be a problem. Do you have any comments?

MR. COX: I agree with Jim that if we can set up a system where it would be convenient and easy to do that to get around and study documents and compile an archive of other studies for a project where you could use a tabular form to find stuff, it would really reduce the paper load.

I know administratively one of our problems is just that the paper load we have in our office is substantial. And I don't even have an

administrative assistant. I handle all the paper myself.

MS. JANOPAUL: I don't either.

MR. COX: When you start looking at boxes of material, it's unbelievable. The other thing is the current situation in Interior and BIA. I mean, we have no means to electronically communicate with BIA right now which is -- it's a pretty substantial problem. Of course, they're apparently going to rectify that apparently. So at some point that will be corrected in the long term. So I think it's an important issue.

Getting back to the notification thing.

What I was thinking when we talked about it in our office was right now we receive all notifications for projects in Wisconsin. And for us that may be okay especially if it's streamlining to a process where there isn't so much paper. But the other part of that is the notifications go to the chair right now, and the chair's office, sometimes stuff gets sent timely over to us, sometimes it doesn't.

So the chairman staff has to make those kinds of decisions, and that's something that can be worked out after it's identified how you would scope for tribes. But right now we use Wisconsin as a

whole for notification. Certainly other tribes are going to be different. GLIFWC may want to use a map they gave you where a ceded territory issue falls into play there. But that's how we use our notification process on FERC issues now which is in Wisconsin.

We did a thing nationwide with the Army Corps where they asked us what nationwide permits we wanted to be notified on, and we gave them a map with a defined area on where we wanted to be notified. Maybe there's something we can do there. But that was a couple of the things I was thinking there.

MR. THANNUM: The other thing too with technology or GIS to have more Web base expertise and software that's been developed, having base maps, for example, where are these sites in relationship to watersheds? That helps narrow that focus down as we've talked before. Having a situation that if a tribe sits back and says, well, I don't care about being notified of all the FERC sites throughout the state, but I am curious if it's one upstream from me.

I think having some of those resources to kind of focus where these are at and when they're

coming due, some of the real basic information. And I'm sure we heard yesterday that some of the companies, they get tired of mailing boxes of stuff out too. A lot of agencies -- there's got to be an easier way of doing this and handling this. And I think that as that technology evolves, and it has a lot recently, they've been taking advantage of it.

Some of the tribes might not have access to those resources right now, but then again, you look in the next couple years, a lot of tribes are developing community colleges and so forth. So I think that technology is going to be more readily available in the future.

MS. JANOPPAUL: I want to specifically introduce you to Mark Fedora who is here with the Forest Service in this region, and he's working on those various issues with some of our databases, locations of dams in watersheds using the GIS system and other systems.

MR. TORQUEMADA: What I'm hearing though is something like FERRIS is not going far enough in terms of sharing maps, getting searchable documents that you can use real quickly.

MS. McCOMMON-SOLTIS: One of the things we ran into on this ANA project I mentioned was

early on when it was still RIMS, we were getting a bunch of background information on a whole bunch of FERC sites that are in the ceded territory. And then after 9/11, everything just went away off the Web. And we were talking about this a little bit during the break. And I agree, I mean, that's a great way to get information.

But I'm a little concerned what's going to be there. Because I've put in a couple license numbers and come back with no hits, and I know there's stuff out there. And it sounds like some stuff that was pulled off maybe is getting back on. Is there any sort of --

MS. MILES: Can I speak to that? The hydro stuff is supposed to be on the Web with the exception of drawings that are larger than eight-and-a-half by 11. But because of the system the commission's computer folks are using, some things that we think we've entered aren't actually getting in there. So you should have everything that's filed with us, applications, with the exception of the big maps. You should have all the scoping documents we issued, the environmental documents and the orders.

If you run across one that's not there,

please give me a call. I will give you my phone number because we are working with our computer folks to try to figure out where this glitch is.

We've had our own frustrations. Normally what will happen is it will come up and it will say you can only get this via FOIA.

MS. McCOMMON-SOLTIS: We submitted a FOIA request and then we were told we didn't have to submit the FOIA request.

MS. MILES: You don't have to submit a FOIA request. They are supposed to be available. If they're not, it's our glitch, and we want to fix it.

MS. McCOMMON-SOLTIS: Can I ask a technical question? Do you put the letter in?

MS. MILES: Yes, P and a dash, and then the docket number.

MR. HOGAN: Your best bet is to not put the subdocument in there just because sometimes things are filed without a subdocket and it may --

MS. McCOMMON-SOLTIS: Not catch everything.

MR. HOGAN: Right. So you have to know what you're looking for because it will pull up everything. But sometimes things are not filed

correctly.

MS. McCOMMON-SOLTIS: That helps.

MR. THANNUM: I was going to bring up this just having a better explanation of how to utilize the resources we were talking about here. We're trying to do this project, and we've got people experienced in computers. And if we're having this problem, I can imagine a smaller tribe starting out.

So whatever instructions can be developed on how to effectively use the search engines and that type of thing I think will have a direct relationship on the efficiency.

MR. HOGAN: I believe there's a phone number on that page if you're having problems that you can call, and they'll walk you through it.

MS. McCOMMON-SOLTIS: I've only done FERRIS once. I did more on RIMS.

MR. HOGAN: We all hated it.

MS. McCOMMON-SOLTIS: Okay. Then I will too, I'm sure.

MR. McKITRICK: One of the things that was mentioned dealing with time frames was management plans that were filed either from the state and you've mentioned the tribal plans. I

wasn't sure if this was goals and objectives types of management plans or the comprehensive plans that are filed with FERC in relationship to what the IHC said.

MR. THANNUM: I'd like to discuss that a little bit. It's a situation that we understand from our dealing with the Forest Service we're involved in the planning process there. But I don't have a lot of awareness of the various plans or where they play, and that's one of my questions. How do these various plans and their categories fit into this process? And where would the tribal plans fit into that? If there's various classifications that they must be considered during the application, others are more of a recommendation phase.

MS. JANOPPAUL: Maybe Ann or somebody could explain. I'll just say that the Forest Service is actively filing its forest plans with the commission, but I believe you keep a record of all plans that have been filed for that river system or something?

MS. MILES: Yes. All plans are available on the website. There is a listing of the comprehensive plans by state. And I think you know that in order for them to be considered and put on

that list, you do need to file them with the secretary. So that's an important thing to get out to the tribes is that these resource management plans to be considered an official comprehensive plan do need to be on our list, filed with the secretary and put on the list.

And I guess someone on the IHC is going to have to help me out here. I believe we were going to put a list of the identified comprehensive plans out early. Wasn't that somewhere in here so that everyone -- all the stakeholders could check and make sure their plans were submitted?

MR. WELCH: I'm remembering now there was an ITF agreement on the notice of intent. We were going to put a list of comprehensive plans or something. I remember that.

MS. JANOPPAUL: Yes, that's where it was. I don't think we discussed it in the IHC. But when FERC says that the licensee filed the notice of intent, they would at least put out a list, and so that would be the equivalent of box one -- box two.

MR. WELCH: I do remember -- and Bob and I were discussing this earlier -- I do remember in our discussions on box one when we developed that whole packet of what that prescoping document looked

like, that there was a section in there for the applicant to identify all relevant management plans in the river basin or something like that.

MR. DACH: And I don't believe -- at least from my perspective, it didn't eliminate anything. So if there was a tribal plan out there and it wasn't on FERC's website or recognized in the FERC comprehensive plan, it didn't mean that it was not useful. I mean it would still be something that had to be entered in --

MS. JANOPPAUL: But that is something you look at when a licensee files its application. You look and see if it is consistent with the plans that have been filed with the commission, right? So if we have failed to file those plans, and I remember several of the projects I looked at in '93, nobody filed any plans. So it was kind of a, yep, consistent with plans because there had been nothing filed. No state had a recreation management plan for a particular river or something like that.

MR. THANNUM: It was a real question, how do tribes do that system --

MS. JANOPPAUL: If you have a position about who should be responsible for that or how that should happen. I don't know that the IHC was really

proposing that the applicant be responsible for looking at it and collecting plans, or were you?

MR. WELCH: I think so.

MR. DACH: We were saying that anything that they could get their hands on that was available. What we limited it at was things that are available. We didn't ask in that box zero for them to go out and develop things. It was more the idea of going out there and contacting all the folks that we could think of. If we forgot some individual or some thing, it was mostly because we forgot it. There was no intent to leave something out of the process.

But the idea would be that they would then assimilate all of this available information over that time period before this prescoping document was due to be filed. It's very appropriate, and I don't know if we drew it out in language that they would contact the tribes and get tribal plans and that sort of thing.

MS. McCOMMON-SOLTIS: That gets back to what we were talking about earlier is tribes having somebody that tells them these things. I mean, really, that calls them up and says, okay, we're collecting plans, got one that's of interest in the

area that we're looking at? And just having a resource at FERC like that would be absolutely invaluable I think.

MS. SMITH: And just sort of practically speaking, the resource agencies find those plans incredibly helpful. I'm helping NMFS, the BIA, the Fish & Wildlife Service do 4-E and 18's in a project, and at the top of this watershed are treaty-confirmed fishing rights for this project.

It's sort of our view that those tribal fishery management plans are some of the best data out there, and those conditions will certainly reference those plans, and there isn't any sort of deadline. There's three tribes there, and they need to get those plans in. We strongly encourage to make sure that any data that they have would get in the record so the resource agencies can look at that and fashion their prescriptions, and conditions, and recommendations to reflect that information.

MS. JANOPAUL: So that the licensee would be responsible for collecting plans?

MR. DACH: Not for developing.

MS. JANOPAUL: I never said developing. I say collecting or filing.

MR. DACH: Not developing. The idea was

that -- well, the idea --

MS. MILES: Can I ask a question? Let's move to something else. Because I --

MS. JANOPPAUL: But I do think this fits in with a lot of the comments saying who's responsible for what? I heard a lot of comments this morning asking who's responsible for cultural resource management plans, who's responsible for monitoring, who's responsible for enforcing? And so I guess -- we heard a lot yesterday, what are the various agency roles. So I see this fits into a pretty big question.

MS. MILES: That's my question. I'd like to get the tribal input on this is the way things work in the existing process, is much more -- the licensee needs to go out and solicit comments, but they don't need to come to your door. They need to ask you to participate, but it sounds like what you're asking for is a little bit more.

And I think we've got a dilemma here about whose responsibility is it? Is it the tribes' once they know something's going on -- is it their responsibility to come and be here? Or what can we build into the process to make it very available to the tribes?

And one of the questions I have is --

this came up yesterday. If there was a very early meeting, that there probably should be, I don't know where, between zero and one or something like that where everyone's invited to come, everyone talks about what their responsibilities are for the various resources that are affected by that project, maybe you get into issues. Maybe people bring their lists of comprehensive plans there. Would sort of a letter telling tribes, this is happening, this is very critical, we want you all to come, would they come?

MS. McCOMMON-SOLTIS: Maybe.

MS. MILES: One of our big issues is that the tribe may not participate early on.

MR. McKITRICK: What is the best way to ensure that?

MR. COX: Although the tribe may not participate early, the process doesn't ever -- if they're notified by letter, doesn't lock them out at further steps. I'm not saying that we would intentionally not participate early. What I'm saying is that there may be a project that -- I'll use Menominee as an example -- that's not affecting the reservation directly, but it's a project we're

interested in. Some cultural resource issues may be there, a problematic agreement issue, and may not be participating in an early meeting, but as the process goes on down the line, we may want to jump in there as the process goes.

So in that example it would work, but there still should be notice at the early stage there. I don't know about box zero, but at least box one where we talked about before and whereas we're notified before this larger group of stakeholders would be.

MS. McCOMMON-SOLTIS: It is in large part going to depend on the extent to which resource tribes are interested in are impacted by that project. And sometimes they don't know necessarily. That's one of the purposes of our grant is to figure out which ones have resources that we're interested in so that when we get that letter, we can compare it to our table and say, oh, well, there's wild rice here or whatever, we want to go and participate in that. So a letter is helpful.

Even if tribes don't participate at that point though and you're at the point of collecting plans, reaching out again, you know, I know it's hard, but we got to kind of allocate -- I mean it

is the tribes' responsibility at some point if they're going to get involved, they got to step forward and get involved. But the more opportunities they get to get sort of nudged to say here's something you might be interested in, the better.

MR. THANNUM: I'm looking at two different factors, and I'll reemphasize the point Ann made as far as the whole reason we're undertaking this project. We're aware FERC was out there. We didn't know how many sites were out there, when they were due, kind of felt we were the little mouse with the snowball coming down the hill. We knew a lot was happening, but we didn't know the extent.

As we're going through the process, we're just starting to learn about the FERC process as far as legal authorities, tribal participation. So a lot of the tribes are going to be in the same boat. No one has dealt with a lot of these issues for a long time. It's going to be the first time.

I think basically Doug with his experience at Menominee, it's the tip of the iceberg. They're the first ones being encountered by this. But in the next few years more and more

tribes will. So whatever education type of workshops can be developed as far as explaining to tribes the FERC process, what are their opportunities for participation, what is at risk if you don't participate early, I think that's really important to communicate so there's a clear understanding of the process.

And that was one of the things we're doing with the legislative analysis, how does this system work? And given limited time and people, where can we most effectively impact the process? And we're finding out that the later you wait into the process after you've got all the studies done and so forth and then you've got an issue, sorry, the train's left the track. We're done.

And so it's a situation communicating that's going to be important and understanding those relationships are going to be important. But at the same time just as you've got that information with the tribes, you're also going to have it with the power companies because they're not going to know anything about tribes. They're not going to know about tribal sovereignty and authorities. How many people here yesterday were aware of the concept treaty is a state, the tribes might have the 401

water quality certification? My guess, none of them.

So you've got almost a dual aspect here where you're trying to inform the tribes about the process but also inform the licensees about the tribes themselves and their authority. So it's not easy. It's a long term thing. We've been working for 20 years just with the states of Wisconsin and Minnesota. So we realize it's not an overnight type of situation.

MR. McKITRICK: If there are -- let's take the idea of workshops. We have in the past had workshops and kind of as Ann indicated, we send out notices saying we're having this and inviting everyone. If we're interested in tribal concerns and tried to explain our process or whatever comes out of this rule-making, is there -- what's the best way to go about doing that to kind of get participation?

MR. THANNUM: A lot of it is you have to take a step back. Who are you trying to get participation from? For example, if you want tribal leaders, okay, my recommendation is try to find an existing tribal meeting and try to get an agenda or something like that that people got an existing body

there to make them aware, hey, here's some new regulations that are coming by, here's how the tribes are going to be affected.

But on the other hand, say you're dealing with more technical people, more scientific folks. There you're looking at some of the scientific meetings. You've got different associations, for example, the Native American Fish and Wildlife Society. When they're having their quarterly meeting or annual meeting, you might have a workshop tied to that where you got all the tribal biologists and those folks.

So you need to look at who your audience is and who the participation is. And you need both of those groups. And the leadership needs to be aware of what's happening, how their communities can be impacted. But at the same time the biologists have to know about this project if they're going to participate effectively as well.

So you're looking at those existing structures I think and trying to get into those because we all know we all get invitations to meetings all the time and a lot of it's money for travel, you have time to coordinate with your work plans. If you can integrate something within an

existing meeting, I think you're going to get more travel participation. We've done something similar to that on an invasive species project.

We coordinated with the Regional Fish and Wildlife Society and we had about 50 there. If we would have set up another meeting just for that, how many folks would have come? Probably a small fraction.

MR. McKITRICK: And to find out about those types of things, then it would be us calling the tribes to find out when the meetings are and trying to schedule it.

MR. THANNUM: You could go on the website and type in National Congress and American Indian, they'll have their meeting states, native American Fish and Wildlife Society.

MR. McKITRICK: We'll have those kinds of things.

MS. McCOMMON-SOLTIS: A call also makes a big difference, and I know it may be burdensome to try to contact folks. But it happens that one of our interns who works in the solicitor's office and who was an intern with us five years ago, she called me up and says, hey, do you know about this new FERC rule-making thing? I went, what new FERC ruling

making thing? And that sort of launched us into that. And it was just a phone call saying, do you know about this? So that helps a lot.

MS. JANOPPAUL: I had some follow-ups on the education. We had so much changing going on.

MR. MCKITRICK: You're talking really soft, and it's hard to hear you.

MS. JANOPPAUL: I'm sorry. I just had a couple follow-ups on what was said on education. Because there have been so many changes going on we have kind of pulled back a little bit on the training that we use to offer, and I think the last time was down in Charleston, and we did try and involve the Taba Tribe in that. It didn't work out because they had too many other FERC things going on to participate in that training. But there was some outreach there.

But I think for all of us because of these ITF documents and a lot of other changes going on, we've -- we're kind of rethinking and revamping training. But I certainly think that if we get back together again on interagency training or something, we would take these things into account on tribal outreach. A lot of, I'll say people in the Forest Service or my former client or whatever, unless

you're really into a FERC licensing, a lot of it just won't make any sense to you, or it won't have any impact. So it's very difficult.

I had a couple of questions about coordinating processes and whatever. A couple of times you have mentioned your 401 authority, and I'm curious how you have coordinated this with the states in other proceedings, because I know some licensees from our perspective were concerned about potential conflict processes or positions with the state 401.

You also mentioned -- Doug said there was concern that NEPA wasn't being followed looking at track A or B. So those are a couple of things that I'd just like a little more erudition on or explanation would be helpful.

MR. THANNUM: I'll try to. There's one tribe in Wisconsin now that has water quality authority. Potawatomi, I believe, are in the -- have an agreement.

MS. McCOMMON-SOLTIS: They don't have their class one yet, but it should be coming soon.

MR. THANNUM: But the point I'm making is a lot of the tribes are looking into that. So you're going to have a changing process that's going

to be going on. And my guess is a lot of tribes are going to be going, we've got -- we have to deal with FERC. It's probably going to be a new idea from that side about the whole role of FERC as part of the water quality that they might -- the various GIS maps that we have in identifying where these sites are.

This is brand new information. A lot of our tribes are just going to be getting this probably in another month or so. This is just an ongoing thing, so a lot of tribes themselves are in this process. It's going to be new to them, and they're going to be involved in the 401 process. And at the same point the dam operators have to deal with the tribes. So there's no long history to answer your question of how that's worked out. It's something brand new. And it's a problem I can foresee.

MR. COX: The 401 cert process, the dam owner or licensee won't just be the tribe -- if the state has a 401 certification for that project, if the state looks at that 401 certification and there's any tribal waters potentially impacted by their 401 certification, they have to consult the tribe additionally as well. So it's a dual process

for the state as well as if the tribe has their 401 cert on reservation within the boundaries that that project is impacting, then the licensee has the 401 cert from the tribe. So there's the 401 certification. There's a dual component definitely that applies there.

And additionally, in Region 5 alone -- Region 5 EPA alone there's currently nine applications pending. So they're reviewing nine applications now for tribes that have submitted for water quality standards approval in that region. It's a five state region.

MR. THANNUM: I just wanted to bring it up as a red flag.

MR. McKITRICK: If I can understand that. I'm sure that -- were you saying that a licensee may be required to get two 401's, one from the state as well as one from the tribes?

MR. COX: Potentially, yes.

MR. McKITRICK: That's something that -- the way the law was written? That's unusual for --

MS. SMITH: It's already happened. There's places where it's already happened.

MR. COX: The Clean Water Act gives that authority.

MR. McKITRICK: I know that you have the 401 authority. I don't question that. I was just talking about two 401 certs, that that's happening. Great.

MR. COX: And I'm still looking for the page number on the NEPA issue. Do you know what page that is, the A and B proposal?

MS. JANOPPAUL: It's page No. 14, but it's just not -- they're not numbered overall.

MR. COX: My comments are written on there.

MS. JANOPPAUL: My recollection is you said that looking at track A and B you seem to be jumping right into the NEPA document.

MR. COX: Track B reads, the commission will prepare a draft order for condition issuance within 50 to 60 days after receiving the federal resource agency's updated conditions, the last sentence on track B. My concern there is that that draft order, is that consistent with NEPA? And does it follow the available time lines under NEPA that we would have to comment on and participate in?

MS. JANOPPAUL: And I thought FERC might explain its position on comments regarding final NEPA documents.

MS. MILES: The idea between track A and track B, in track A it would be anything that required the EIS. Because when you have to do an EIS, obviously there's always a draft and a final. And then there are some projects that don't rise to the level of needing an EIS, but they do still need opportunity for comment. And so those projects we would also follow the track A which requires a draft NEPA document and a final NEPA document.

I think FERC believes that every project doesn't need two NEPA documents. There are some that are very simple in that a cost saving -- timesaving measure is where you've got a simple project with people that don't have much interest in it that one NEPA document would suffice. And that document would be issued. Anyone would have the opportunity to comment if they wanted to, but those comments would be addressed in the actual order that was issued. We would expect where we chose to do only one environmental document that we wouldn't get many comments. I mean that's the idea, that you use track B in situations where you don't expect -- where there aren't big issues, and you don't expect many comments.

MS. McCOMMON-SOLTIS: Do you have many

of those?

MS. MILES: We actually do have some that are very small with no one who has much interest in them. There aren't a lot of them. We also agreed --

MS. JANOPPAUL: You don't have a formal comment period for a final NEPA document, is that correct?

MS. MILES: That's correct.

MR. COX: That's track B. That's where my concern came from, and I didn't read into track A that there still for the -- however you would make the cut there on to a larger or medium size project that you would have a draft EA. What I saw in track B is that you're locked -- you're almost locked out of a draft document whereas our project keeps coming to mind as an example, and I'm a little biased there. So the draft EA that was produced failed to recognize the fact that there was even an Indian tribe that existed there.

And again, I realize that this thing was produced in the 70's, and there are some large differences between what is happening now and what happened then. But it's still a concern that if somebody overlooks something and a document comes

out like that and you lock yourself out of a --  
you're locked out of a NEPA process, then there's a  
problem.

MS. MILES: Let me say one more thing  
about the tracks. This is a -- a decision isn't  
made on that until you've had lots and lots of  
opportunities to comment. And I think it's one  
reason why we're wanting to know how to get the  
tribe to the table at the beginning because we don't  
want that to happen, and it should be happening when  
you get there. We should know by the time we choose  
which one of those tracks to go who everyone is that  
cares about this project, what their issues are,  
they've already commented, and the decision should  
be made with a lot of information available. That's  
the plan of this. So whether that works for you,  
that's what we're looking for is your thoughts on  
whether that will work for you.

MR. COX: And that's what I'm giving  
you. So I realize that this stuff comes further  
down in the flowchart in that if our comments on the  
flowchart where box one comes into play are  
addressed, then obviously we may have resolved that  
issue by the time we come to this track. So yeah,  
some of my comments do kind of become answered in

the flowchart -- earlier in the flowchart, but it still doesn't mean that I'm not going to ask those or make those comments there.

MR. WELCH: Just to expand a little bit.

Even in box -- if I remember correctly, even in box 18 when we issue a notice accepting the application, I think that we've even put provisions in there to actually ask the question, should we do a draft? What is your thoughts on doing a draft? So we're going to be asking that actual question. And we're hopefully going to be real sure of the answer before we go A or B.

MR. THANNUM: Is there some criteria you finalized for determining track A or B? I think that might be helpful in determining a defined criteria in which way you go in having that step in the process.

MR. McKITRICK: With the time lines, again, I think before we move on too far, I think one of the things I did hear was you're concerned about state-to-state consultation within the time line and when it occurs. Were there specific types of consultations or times that you might need?

MR. THANNUM: I guess one of the things that I was looking at in this overall process, it

seems that the objective is to identify issues and resolve those as early in the process as possible. That's the overall strategy here.

I am concerned that the 60 days, going from two to three in those time periods for comments, it might be better to spend a little more time in the front-end trying to get as much cooperation and integration with the agencies at that end because I think it's going to save you time and may come to preventing disputes and those types of things. That was one of the concerns I had just from a practical sense.

I'll just go out and refer to an example here. I could see getting the notice. You've got 60 days to comment. In the spring, the tribal biologist, he's running the fish hatchery and trying to get ahold of the folks from the Fish & Wildlife Service to discuss that or maybe the local fish manager from the DNR, there might be a cooperative agreement between the tribe and the local DNR, and trying to get everyone on the same page and discuss this and trying to turn that around in that time period there. I'm concerned about that, if it's practical.

MR. McKITRICK: Is 90 days -- I mean we

realize this is a regulation, and we try to specify things. But if you have ideas of how to -- get participation from the people that may be affected is helpful.

MR. THANNUM: It's a situation I think that's going to vary so much by the size of the tribe. I've got a separate fisheries biologist, a separate hatchery manager and a wildlife biologist to look at that wild rice. Maybe make it 90 days is fine. But if I'm a small tribe that has one biologist covering all those areas, it's going to be more difficult. So I don't mean to dodge your question. It's very dependent upon the size of the reservation and their expertise that was available.

MS. McCOMMON-SOLTIS: One of the things that was raised earlier is maybe having the meeting somewhere between box zero and one to kind of get all the parties at the table, kind of make the connections, get the biologist talking to the Fish & Wildlife folks, and maybe that could help if they start at that point coordinating things, then they wouldn't have to do it all within the 60 days. I still think 60 days is pretty short. But the more that can be done kind of even before then so that you're ready for that 60-day time period when it

starts or 90 or 120, whatever.

MR. THANNUM: A lot of the practical nature with this is dealing with the timing. If you have the initial meeting in January, yeah, a lot of folks that are looking for biologists, they'll attend. If it's in April and May, I guarantee you'll have very few tribes participating. That's when they do the boom shocking, and biologists are out in the field. So the whole timing of the meetings and so forth based on what's happening has a role as well.

MR. DACH: One of the things that was brought up and discussed a little bit yesterday was under what circumstances would there be a time extension granted by the commission or somebody. The issues that you're bringing up -- we knew that there was going to be a problem there. It's hard to draft up time frames that are going to work in every situation. So what we never got into is what happens if there's a party that just can't do it under these time frames. Do we allow time extensions? Do we not? What kind of conditions would be necessary in order to allow for the time extension? None of that we have really addressed.

And I think it's right for comments and

whether or not -- let's say, what we're trying to do is not make these processes take 27 years. We're trying to not have them take any more time than they absolutely have to. So there's sort of a desire to maintain the schedule with the understanding that sometimes you can't for good reason. And it's that "you can't for good reason" that we haven't framed yet. So I think it would be a good location to sort of get your input in there. These are the things you may want to consider when you're discussing whether or not a time extension is necessary.

MR. THANNUM: My general comment would be, I think the more flexibility, there again, you're bringing into the earlier phases of that for extensions and so forth, I think it's going to save you complications for the process.

MR. DACH: I think you're right. If you lock everybody out and start giving time extensions when the NEPA document is coming out, it's not going to do a lot of good, so I think you're right. And again, it's a good idea. It was one that we just -- we were more focused on, in the IHC, how quickly could we get this done and was this time frame reasonable, and I think of course all of us in every situation it probably is not. But how will we make

it flexible enough to adapt to those situations where it needs to be flexible? I think, like I said, it would be very good for help on that.

MR. THANNUM: One of the things I think would be really useful to help get greater insight in that area, I assume when this process was developed it was by a group of people, and I'm not sure how much insight from the field people came. But I'd like to, for example, have one of our biologists, one of the Fish & Wildlife Service biologists from the Minneapolis region and the local Forest Service that we've got here today, say, is this realistic on their schedules? Because that gives you a different perspective, who are the guys who deal with it day in and day out. So I think somehow getting that input would be useful.

MS. JANOPPAUL: There was another -- and I'm sorry, I don't know who to attribute this statement to, but I heard one question was, do the Forest Service and BIA and other agencies have enough resources, money, funds or resources to assist the tribes in identifying tribal resources that are impacted? And I guess this is a tough thing for the Forest Service to sometimes figure out its role in relicensing and its role in Section 106

consultation, its role when a tribes' involved as well as BIA in a FERC licensing where we are not the lead agency.

So I think I'm a little curious as to what it is that you think that the Forest Service is responsible for to a tribe in a FERC licensing versus what is practical and facilitating. And particularly with regard to 106 consultation, somebody mentioned cultural resource management plans. Who's responsible? Are you satisfied with the cases you've had where that's worked out with delegation to the licensee or not?

This is something the Forest Service does struggle with. Because usually if it's on Forest Service lands, we're in charge. But in the FERC case, we're not first in charge. So if you could clarify those two things for me, what you expect us to do or fund, and what do you think our role is in things like cultural resource management?

MR. THANNUM: I guess I'll try to answer the first part as far as funding and so forth is using the situation of a case study with the wild rice. There was a lot of communication between the tribes, and I think GLIFWC was active in partnership with the Forest Service. We're in a unique

situation because there's a formal cooperative MOU between the tribes and the Forest Service that deal with gathering rights, and there's some organic documents that help facilitate that relationship and some guidance. So I think that -- I would point you back to that as maybe some assistance in looking at how that was structured and those discussions.

And I think what's happened is that organic document helped develop a relationship. So you're starting to -- you know, instead of GLIFWC it's, oh, that's Peter David, it's more of a first-name-type basis situation. So there are other social factors and so forth that play into that role as well. Our biologists for years have been working with the Forest Service regarding fisheries issues. We've done research on the Martin, Pine Martin and other species. So there's a whole informal network which when the FERC license comes up, everyone knows each other, and it's easy to address that. If you don't have that, I can see the complications you run into. Who in the tribe do we talk to? Who's got authority on these areas? Am I talking to the right person? So I realize in a lot of cases it's a more difficult situation. I would refer you back to that organic document, the MOU that's on the website and

we developed through the Forest Service on that.

MR. TORQUEMADA: If I could step out of the facilitator role for a minute because we're involved in that project. The traditional licensing approach where you have more time facilitates those kind of relationship building and really working together. The shorter the process, the less you seem to have those kind of relationships develop. Unless you have the same players in place time and again for a long period of time, it's been my short experience that it's harder to get those relationships built in the way you're talking about.

MS. McCOMMON-SOLTIS: And when you have them, you go into that relicensing in a much stronger position because all the agencies on that side of the table are saying, yes, this needs to be done, and here's how it needs to be done. And that is a big concern that we have. That we have the time to cultivate those relationships, particularly since tribes are not able on their own to recommend a 4-E condition, for example. They need to work with those other agencies to get to that point and that takes some time, and it takes a relationship.

MR. TORQUEMADA: And how do you build the relationship, the good working relationships

that will fit into short time frames for relicensing is the real challenge.

MR. McKITRICK: It's around noon. I didn't know if we'd like to continue through some of this. Maybe talk a little bit more about time lines or take a break for lunch and come back. I'm open to suggestions.

MS. McCOMMON-SOLTIS: I have to leave about 1:30.

MR. McKITRICK: I'm fine. Is that okay with everyone? Let's go off the record.

(Discussion off the record.)

MR. McKITRICK: I think what we'd like to do is a couple things. One, kind of go back to some of the discussion topics and make sure we've hit everything that was mentioned early on and focus on that, or if there's specific things, perhaps, Ann, that we aren't getting that you would like to bring up before you leave to give you an opportunity to do that.

But we did initially start with time lines. We started going through some of the chart. There were a number of things mentioned that we talked about. Is there anything else that you can think of associated with time lines or consultations

within time lines that maybe you have additional questions or comments on?

MR. COX: I did on management plans. I heard some discussions about submitting those in tribal comprehensive management plans, offer projects that are off-reservation where there might be a Section 18 authority issue which would be tribal -- comprehensive tribal management plans replaced -- can they replace the state's comprehensive management plans? Are they acceptable? I guess that's a question. I don't know if it's relevant to the draft here.

MS. MILES: I can speak to that. One plan wouldn't replace another plan unless the person filing it intended that to be the case. What would happen through the process is you would look at all the plans. And as it has been historically, the licensee would do that. FERC also does that as part of its NEPA review. And where there are conflicts, those would need to be identified.

MR. COX: My thought isn't so much of conflicts of plans, it's in the absence of one. If the state doesn't have one, then you have to replace that one.

MS. SMITH: I don't view it as a

replacement. But if you're doing a fishway and you need information on a certain species and some statement on the river and the tribal plan has it, that's the one you're going to go with. It's your information if the agencies are going to be relying on it.

MR. McKITRICK: And it is important to have those filed with us.

MR. COX: That question was asked with full intent that the plan would be filed.

MR. THANNUM: I've got another issue to bring up, and it ties with that. In yesterday's meeting there was some discussion. I didn't know what work had already been done -- say fish assessments is an example. GLIFWC, every year we do various reports on putting out recruitment surveys, walleye population estimates. It's got an internal scientific report that we've done as part of the federal court case, and the stipulations that are required under that. I'm bringing this up because there's a whole mechanism. What about that type of information, how does that go to the process because I heard that yesterday discussed.

MR. McKITRICK: Maybe somebody from the IHC wants to address the cumulation of existing

information, where that happens. That was the question, right, things that are already --

MR. THANNUM: It might not be a management plan, but it might be information.

MR. DACH: Well, the -- I mean again, the idea is that in that box zero, the applicant goes out and identifies all that existing stuff. That existing information can then be brought forward certainly during the scoping process. It would be very beneficial that it came on the table during the development of the studies so we knew where the gaps were and how the studies needed to be conducted.

So there's -- typically the idea is you want to get all the information that's out there no matter who has it, and it behooves most folks to go to some extent to find that so they don't have to actually do it themselves. Certainly that's the way it is with the service and with some of the other resource agencies who don't have the capability to do it themselves.

So I don't know that there's -- there's certainly not in the IHC process at this point in sort of the outline format that we have a step that clearly says, go to the tribes and get this

information from them, or go to anybody and get this information. But there is clearly defined in the box zero stuff and through the NEPA process that says, get all the available information you can for these things.

There's other things that are indirectly related to the licensing process as well, various policies and procedures from the different agencies that specify where to get that information and how to get it through the contact.

So it's out there. It's not presented in such a way as, you know, it's a mandatory requirement at this time to get that. When you're looking at how we do it and how this is written up and sort of the NOPR language and the regulations language, if there are ways that you feel more comfortable identifying that kind of information and how it would fit into that language and where it would fit into that language, it would be helpful for us to see that. I don't think anybody is opposed to saying any recommendation at all on how it would be best to relay this information.

MS. JANOPPAUL: But again, it's the Forest Service taking responsibility for its filing and its plans every stakeholder, which you are too.

That's something to think about. If there's a river you're involved in and you have any plans, get them filed at FERC. But the idea that a licensee is just going to go out and know what's developed for existing information isn't going to happen. It's more likely to happen if you contact them and tell them there are certain issues you're interested in and work with the agencies to have studies developed in that area. Or if during scoping -- this is where we really talked about looking into existing information during those prescoping and scoping -- were issues identified, then you can work together with the licensee and determine if there needs to be a search because that can be very expensive.

I mean what kind of existing information? So it's a two-way street. You need to let them know what kind of issues that you're going to be pursuing as well, and we talked about having a two-way street.

And again, earlier involvement of information, earlier involvement of us, earlier involvement of you, are we really all ready for that?

MR. THANNUM: What you were saying is, what I picked up on was there's a document with the

names from the DNR. You know, talk to this guy from the fishery for information, correct?

MR. DACH: I don't --

MR. THANNUM: The preletter, when you first send it out, my point is tribes should be added to that.

MR. DACH: I don't think it's been developed to the extent where we know exactly who in each case needed to be contacted. It's not that it couldn't be. I just don't think we've gone that far yet. We a lot of times too look to the utility because it's their ground. They know who is out there. They don't know everybody. They don't know how to talk to everybody, but they usually come to the table with a good start.

We have problems with the tribes finding out who is out there, if they want to participate, and a lot of times we'll take nonparticipation as not that we didn't notify them correctly, it's just that they don't want to participate.

MS. McCOMMON-SOLTIS: That's not -- often that's not a correct assumption.

MR. DACH: Absolutely, I agree with you. That's why if there's some way to write into the regulations a mandatory step that we could be

assured that we did what we needed to do, and you guys develop this step so we knew that that step was acceptable to you and how you wanted the process to work, it would be really helpful. Because I don't think that we're opposed to doing anything that's necessary in order to bring the tribes to the table. We're just not entirely sure what that thing is.

MS. McCOMMON-SOLTIS: We'll definitely address that in our comments to the extent we can. It's not easy. I'll tell you that much.

MS. MILES: I wanted to say one thing in addressing your comments -- that I'd like you to address in your comments. You talked about not enough time in the very early stages. But when you're looking at that, remember that the filing of the license application, that must occur two years before expiration. So it's one point in the process that's not flexible.

So when you're looking through this schedule, realize that it has to be filed two years before the license expires. So we either expand that prefiling to start earlier than like three years, or you change the times around. When you add these up, you get to about three years.

MS. McCOMMON-SOLTIS: Is this applicant

-- files final application with FERC, box 16.

MS. JANOPPAUL: That has to be two years.

MR. McKITRICK: That's always two years prior to the expiration date. So if you look at a table and you see when it expires, then the application is with FERC two years prior -- at least two years prior. Anything else dealing with time lines that you might have questions about that we'd be able to respond to?

MS. McCOMMON-SOLTIS: I have one sort of related to time line issues. I'm not sure where exactly our comments will come out on this. It's more just sort of raising an issue, I guess. Is that, one of Fond du Lac's comments and one of our comments is we really have to make sure we have sufficient time to understand and assess the impact.

And I guess yesterday there was some talk about sort of one size fitting all, and it's clear we need to have some flexibility because that's not going to work for every tribe, and it's not going to work for every applicant. And maybe it's worthwhile to keep this process in addition to a more traditional process so that where it's needed and where you really do need that upfront time to be much longer, you can have that. I'm not sure about

that yet. It's just kind of a thought.

MR. McKITRICK: That's certainly one of the things we're very interested in hearing from people.

MS. McCOMMON-SOLTIS: And I think too, particularly where you have projects that have multiple reservoirs, dams, you've got a whole river system as opposed to maybe one little project off by itself. Those are -- that's going to mandate I think some different time lines.

MR. DACH: Can you elaborate a little bit on the -- I'm not -- my light bulb hasn't gone off yet on the upfront time, for example, in a traditional process. I don't see there being any upfront time in the traditional process.

MS. JANOPPAUL: This is more upfront time.

MS. McCOMMON-SOLTIS: I mean, maybe I'm sort of picturing this wrong in my head. But I have an image that the parties are getting together somewhat frequently very early on. And like in the Lac Vieux situation, you had the Forest Service meeting with the tribe and meeting with GLIFWC and sort of all getting together about what they think the condition should be. And then when they went

into the more formal process being all sort of on the same side of the table saying, yeah, this is what we need to do, and I'm concerned I guess that -- about losing that.

MS. JANOPAUL: You think the traditional licensing process facilitates --

MS. McCOMMON-SOLTIS: It must allow it to some degree.

MR. McKITRICK: Let's see if I can put this -- my understanding of what you said was in the traditional process, if there is something that happens three years before the notice of intent, starts a formal process, I mean that's when the traditional process starts, prior to that period of time, the notice of intent, many licensees or some licensees will have informal meetings. It's not in our regulations, but they'll sit down with people, talk to them. There may be studies and all kinds of things going on as opposed to, as I understand the IHC proposal, that may be formulated more on a regulation, that preperiod, that then starts the dates. Am I hearing that wrong, or is that --

MS. McCOMMON-SOLTIS: No, I think that's right. So the sort of -- I mean it talks about the applicant having to consult and secure

recommendations of these agencies, and I get worried that that's going to somehow be diminished.

MR. DACH: So it's kind of like as soon as the NOI has filed in the case of this proposal, it's like boom, boom, boom, boom, boom, and under the traditional process it sort of gets notice, and there's a whole long blank period where nothing happens that gives people an opportunity to work together, and that's sort of where you're coming from.

MS. JANOPPAUL: But under the traditional process the licensee is required to consult with the tribes and agencies, maybe not other stakeholders, but there is that firm thing here whereas we're more egalitarian in the IHC proposal, and there is no firm identification like you're talking about. What if that was included in here somehow or voiced?

MS. McCOMMON-SOLTIS: That would be good. I think that will be one of our comments.

MS. SMITH: I think it was sort of a goal of the IHC to -- one of the aspects of the ALP was to get people working together and ironing out, getting rid of as many disputes as possible. You make your way around this board game, and when you get to the end, hopefully they're done, and we're

aiming for that. But it may not convey the sentiment that we actually wanted to.

MR. DACH: I think it's a good -- I can see now when you get that NOI, you're in a process now, and there's not a whole lot of deviation from that.

MS. McCOMMON-SOLTIS: Right.

MR. DACH: That is clear in here. So it would be the period that I'm thinking, trying to work away with my brain -- around my brain is with that box zero, and we put a lot of weight in our box zero by the way. That was sort of like the --

MS. McCOMMON-SOLTIS: It didn't get solid lines in there.

MR. DACH: It was like all the good things from all these upfront deals. We didn't want to require it, but we wanted to encourage it as forcefully as we could, and there may be some way to work around that box zero like that kind of requirement where they had to make contact with the tribes and the state agencies as well.

MR. COX: We should have learned now by encouraging licensees and requiring them, we have two vastly different results.

MR. DACH: Basically what we're fighting

with the box zero is the appearance of a three-year extension on the licensing process itself. We didn't want to -- what we wanted to do was give them sort of helpful information on what's going to make their lives easier once we get into that bang, bang, bang, bang thing and --

MS. McCOMMON-SOLTIS: And I'm afraid that if the licensee looks at this and says, well, if we can just hold them off until we get to bang, bang, bang, they may miss some of the crucial deadlines here, and then we don't have to pay any attention to them at all.

MR. DACH: That's good.

MR. McKITRICK: Anything else in the context of time lines -- or we kind of moved into the one size fits all, but that's fine.

MR. COX: I saw something in the time line. I didn't write down it in my note where it was. The language said filing by agencies would be on a concurring -- to be developed concurrently so the agencies would file concurrently. That to me seems to be pretty optimistic due to the things we've pointed out. You get three or four different agencies all at the table, it's a challenge. You get them all on the same time schedule, I think it's

an even larger challenge.

MR. DACH: Boy, are you preaching to the choir.

MR. COX: We've had relevant experiences. So I think that that comment just is just a comment. I think it's pretty optimistic to assume that we can get everybody concurring.

MR. DACH: We're getting more impression than just good ideas on this one. We're being pressured from the administration, from within our own departments that we have to figure these things out. So we're aware of it. We're trying to figure out a way to put together a process that would encourage that. Right now we have processes that don't encourage that at all. As a matter of fact, they encourage that not to happen. So what we're trying to do is put together something that at least encourages it, if not requires it to happen.

MR. COX: We would hope then that in doing that that a case that's happened to us doesn't happen again, that this concurrent filing and time lines concurring would be one of agreement also upfront that FERC agrees with Interior that, here's the time line, here's when 4-E is going to get filed, and we're going to accept that. And if

during that process things get extended, then there's equal agreement during the process also.

MS. SMITH: We are already working towards that with the MCRP. We have a spoken agreement with FERC on if we end up filing a little late because new information comes up at the end of the process, obviously, I have an issue with the license yet, but we're working in that direction for sure.

MS. McCOMMON-SOLTIS: That was exactly the comment I was going to make about concurrent filing prior to the completion of the final NEPA document. And I thought, well, you guys better put an out in there just in case something new comes up and you really do need to make some kind of revision.

MR. THANNUM: I have a general question. We talked a lot the last two days both about the IHC proposal, and the other proposal hasn't even come up. And I guess in the back of my mind do you expect a similar process to happen with the other meetings, or are they waiting until they get that addressed? It's confusing from my perspective.

MR. WELCH: We invited some of the folks that worked on the NRG. We invited them to all the

meetings. They just couldn't find someone to come to Milwaukee which is unfortunate because -- but I'm almost positive they'll have someone at the other meetings, and they'll make a presentation very similar to what Mona did this morning, and then a couple times when things came up about the NRG proposal, I kind of flipped back and wanted to refer to it. But I always feel like I don't know it well enough to answer it. But maybe to get more to your question, it's very similar to this. I mean it has the upfront --

MR. THANNUM: The thing I want to go on the record saying, it's a situation at least with this proposal, we have time lines, we have some specifics. The other proposal which makes me nervous, it's real broad, and I want to make sure that's on the record because there's a discomfort level there that they talk in these broad frameworks, but none of the, how is this actually going to work, is even approached. And I get nervous when the industry group gets together and says, we'll work out the details later.

MS. JANOPPAUL: There was a person yesterday from RAW, and even though he hasn't been intimately familiar with the NRG proposal, I noticed

that his statement -- he went over a lot of what the NRG proposal is. So you might go back. RAW is part of the Hydropower Reform Coalition which has been an intimate part of the National Review Group. You could certainly get out to the American Rivers website or talk to them about their aspect. I'm sure you have a working relationship with RAW or something.

MS. McCOMMON-SOLTIS: It makes this one a little harder to comment on from purely being able to say something about that.

MS. JANOPPAUL: I would say we met with NRG, and we clearly don't want to have a competing situation or exacerbate or anything like that. We want to point out again, I just think it's amazing two pretty different processes came up and chose to focus on the same very fertile area, a lot in common. I see some differences. And when we talked to them, they were going to take the role in -- when they spoke in pointing out the differences. We had elected to have that kind of approach.

So that is missing in these meetings, I'm afraid, and I suggest you get in touch with the guy from RAW and see if the NRG can't give you some information. They, in fact, I'm sure, have

developed comparison charts and comparison data if you're interested.

MR. TORQUEMADA: What was that group?

Is that River Alliance of Wisconsin?

MS. SMITH: Well, I'm not here to speak for the NRG in any fashion but sort of looking at the fact that they weren't a public process and sort of more of a policy kind of thinking thing that they weren't about doing details. It's a public process of agencies and tribes and the public sort of puts the fine tune on it and comes up with the details. They were interested in sort of broad ideas possibly, and we can certainly work with those broad ideas and see where they duck tail and go through our public process of trying to work that in or not.

MR. McKITRICK: As you kind of read through the NRG proposal which sounds like you have, I mean this -- at the end of the day there's a rule that may not look like either one of these, and we're looking for comments that you can take from either one, or both, or your own independent comments that would help us put something in some sort of framework. So if there's something you like in one of these and you can put some detail in it or whatever, but make it your own comments. It's just

a couple of ideas out there.

MR. THANNUM: Has someone compared a comparison between the interagency committee's proposal and the existing proposal as far as what's exchanged?

MS. JANOPAUL: Yes. The existing licensing processes, yes, we did that when we presented it to our -- all the principals but the next level up in management when we were bringing this proposal to it we had a comparison, mostly of the time lines is what we focused on.

MR. THANNUM: That would be handy to have.

MS. McCOMMON-SOLTIS: Is it on your website?

MS. JANOPAUL: Not to my knowledge. That was a David Diamond presentation.

MR. DACH: We have it, we just -- we just didn't. It was more of a --

MS. McCOMMON-SOLTIS: That's something we were going to do ourselves. So it would be great if it's already done.

MR. DACH: Our guys are hammering on us to say, where are you cutting time here, and where's the duplication?

MS. JANOPAUL: It's something we find difficult to agree on because -- and I would refer you to the FERC 51 and the meeting coming up on November 8th there. But some of us are looking at the timing of the licensing beyond the issuance of the license, the part that Doug was talking about as a part of licensing, and some of us were not.

And there was also GAO went to take a look at where the time was being really spent on licensing versus nonlicense, and it's hard to actually determine because each license is so very different.

MR. THANNUM: That would be one of the common questions of our tribe is what's changing? So that will be a real big job.

MR. DACH: I'll see what I can do about it, or we'll go back and see if we can stick it on the website. We do have it. We didn't develop it with the idea that it would be public. So we just have to have a look at it.

MR. COX: The comparison compares the IHC and the NRG -- IHC and the old process in comparison?

MR. DACH: Yes.

MS. JANOPAUL: Not only the old process

takes seven years, five years from notice of intent, filing of the license two years before -- excuse me, five years --

MR. McKITRICK: It's set up to take five to five-and-a-half years from expiration date.

MS. JANOPaul: Nominally, the amount of process.

MR. McKITRICK: Anything else? Again, just with time lines, I realize that -- or we've kind of slipped into one size fits all. I'm not clear about reopeners and exemptions. I think, Doug, you may have mentioned that. And if you want to refresh me on that.

MR. COX: The question was in my mind reviewing it because we've got a couple of projects, the existing one and another project -- downstream project that's exempt, but there's provisions in the exemption that require it to be looked at again in the near future.

I'm wondering when we go and look at exemptions what kind of process do we have to do that. Is it this kind of process? Would it be available under this process which really would be helpful because it is a FERC project whether it's exempt or not. It's still a FERC project. We would

like to have a process to be able to get at the issues there.

MR. McKITRICK: From the actual -- you're talking about a new exemption, what process it would go through?

MR. COX: Both.

MR. McKITRICK: Was this proposed for -- I think the IHC proposal didn't contemplate this being used for exemptions, and it would come under our exemption regs as they exist now. And the concept of reopeners and exemptions is really one that if the resource agency that set terms and conditions put in a reopener, then there's a reopener. If they didn't put in a reopener, there's not.

MR. COX: That's our dilemma. The exempt project was exempted in the early 80's, and again, it kind of fell into that -- unfortunately, for the tribe, that no-man zone when agencies weren't communicating with the tribes very well, and we were excluded from the whole process of that exemption.

But again, it doesn't mean that we can't get back at it because it's in the near future and should be looked at again. But the reopener and

exemption question I had, I didn't want to relate the reopener only to exempt projects. I wanted to relate it to licensed projects also in this process because it doesn't say anything about reopeners in this process for a licensed project. Is that still -- are you doing away with reopeners because of this?

MR. McKITRICK: That's kind of a post, after a lot of this. And reopeners are included now in every license that's issued sometimes in different forms and formats. But that's not going away, or if it is, somebody tell me. So that's really outside of -- we're not looking at changing that in any change of regulations.

MS. SMITH: If you wanted to comment to have this rule-making address post licensing, that would be your choice to --

MR. COX: If our comments that we have on the document end up going in that direction, we'll make it specific to post license.

MS. McCOMMON-SOLTIS: Mona, you said you talked about that some, about post license and how monitoring fits in? I thought you said something about that earlier. I'd be interested in hearing more about that.

MS. JANOPAUL: Just back on the issue of time lines when we're trying to figure out how long the licensing takes. It's hard to figure out -- one of the nicest graphics I've seen Ron use is a circle for FERC licensing rather than a straight line. Because when does it really begin, and when does it really end? And so in trying to compare the traditional licensing process and how much time it takes versus this, it's a little hard.

Some of us weren't sure whether we were going to end our measuring time for the TLP when the license issued or when all the appeals were exhausted. When do you end that? And so that was some of the debate we were having among ourselves when we were trying to do things like measure how long it takes. Have I correctly represented that?

MR. McKITRICK: We mentioned a little about NEPA. Was there anything else that the NEPA process --

MS. McCOMMON-SOLTIS: I think we covered the track A, track B.

MR. McKITRICK: We haven't really talked about data gaps, I don't think, a little bit about studies, and that may go into some government relationships as far as consultations and that type

of thing. We talked about that some, particularly dealing perhaps with 401's and some of this other stuff. Anything else that you would see --

MR. THANNUM: I think that one can be -- when we talked about some mechanism of the tribes getting together with states and federal agencies, maybe at that phase tie in to some of the data sharing or you get these institutions together, kind of that prephase we talked about.

MR. McKITRICK: The box zero.

MR. THANNUM: Yeah, I think someplace in there the right hand knows what the left hand is doing.

MR. McKITRICK: So if you had data you've collected, could you share and understand what other people have and decide if there's studies needed? We've talked about that.

MR. COX: Not only if there's studies needed but if the data that's being presented and collected is useful. I think that's important too. Because you heard the licensees talk about that a lot yesterday, was their concerns about more studies and fishing expeditions. Generally, there may be a lot of information out there about a system or a watershed, but a site-specific study just may not

exist.

MS. JANOPAUL: You mentioned this consultation with resource agencies -- you mentioned the consultation with resource agencies and states and thinking of fitting this into the state process and 401 in your own 401. Right now often we do not get a formal letter, a formal request for consultation until we're looking at that deadline for our mandatory conditions being due at FERC.

If you have an idea of when is a good time to encourage the tribes or when's a good time for tribes to request formal consultation in this new process, that would be helpful, thinking about being more involved in the data-gathering stage rather than just reviewing what we're going to submit for terms and conditions.

We're getting involved earlier, do you want to get involved earlier, and where would the right time be? Because I can tell you, often now it comes in pretty much after we've pretty much finalized our conditions, and that's not really effective. So if you have a good time, then that will help us think about better tribal involvement and coordination, and the same with the states.

Thank you.

MR. DACH: That's a good point in addition to when, include how. Because we don't have any sort of defined procedures to conduct the government-to-government consultation. And I know that the way that we do it may not be the way that tribes would like it to be done. So if the tribes could put together, this is how to do a government-to-government consultation, there would be a lot of happy folks over at the resource agency.

MS. McCOMMON-SOLTIS: We'll give you some suggestions.

MR. McKITRICK: Anything else? In all the comments I just reiterate, you can suggest things to us that would help us put together a notice of proposed rule-making in the form of how we consult or deal with tribal concerns, is what we're looking for, would be extremely helpful.

MR. THANNUM: I'm going to make a comment and observation. It seemed like yesterday what I heard the industry say, they perceived it like as the state, tribes' and federal agencies' responsibility to have all the basic resource and all the work done, and they walk in the door and want to do the FERC license.

And on the other hand, we perceive that that's unrealistic because you're not going to have site-specific information for this wide range of everything. So my observation's a real fundamental disconnect there that I witnessed from yesterday, and I don't know the easy way of addressing that. But I kind of sensed that they expected to walk in, well, GLIFWC, you got all the fisheries data and where's all the wildlife stuff, where's all my endangered species surveys, and okay, here's my application. And I don't know, it's kind of frustrating how to address that. That's what I perceived yesterday.

MR. McKITRICK: The individuals may think that, and there's always an encouragement from everyone to see what information you have, and then from there you can see where the data gaps are, and that is the study process. If some of this existing data is acceptable, let's use it. Let's not do it again or reinvent the wheel. Or if it's transferable, let's agree to that, and then find out what is missing, and then work with licensing agencies, tribes and see what pieces of information we're missing and develop that information through a process.

MS. MILES: And that information gap is the licensee's responsibility.

MR. THANNUM: I could give you a case in point. There's a river called the White River that goes into Lake Superior, and there's a FERC process that was ongoing. There's only two lakes left that Lake Sturgeon spawn in, and we found them so that's going to impact the process for running the river. But we just happened to do that out of a different grant. That was never part of the original process.

So I guess that was kind of a concern I have is there's some studies that I think are just general looking at populations and so forth but that are site specific, and I think that's lost in that process and discussion, and I think education about those factors and those early meetings with the licensees would be very useful.

Because I heard yesterday in the discussion that I had with Paul Strung, we had a lot of complaints, oh, it's a fishing expedition. They want us to fund all these studies. When he asked what studies are you talking about, you feel they were unrealistic. We couldn't get a sense back from that. That was sort of the frustrating sense that Paul and I talked about. If you think something is

unrealistic, what specifically are you talking about there? And I think having that discussion up front would really assist the process as well.

MR. DACH: And again, we hope to get at those sorts of issues, at least in the way the IHC had proposed it was we hoped to get through this list of criteria that identified what a good study was. And if it met those criteria, then there would be an expectation that those studies had been conducted.

So the criteria were important in the IHC process. And whether or not those criteria actually reflected everybody's concerns were comments that we were hoping to get as well. They were important from not only a study development but speed resolution. It gets everything in the record lined up correctly so we can determine how and if we have to do any sort of conditioning in the future. That all comes into play based on what happens very early on in the process. And we put a lot of weight into those criteria. But we're only one corner of the brain trust. We need to get the other input in there so we can make sure we have the bases appropriately covered.

MR. THANNUM: One of the things I

thought that I was concerned about is my understanding of the dispute mechanism is you're going to have an agency representative, someone from FERC and the third-party individual. And I was unclear, is that committee going to look at all the issues that are in conflict for that license? Because I could see one issue might be a hydrology issue, the next one might be a fishery issue, and I'm wondering what type of expert might have the experience to do everything from wild rice, to hydrology, to fishery. So I wanted to bring that up.

MR. DACH: We had -- the way that we had envisioned it was to make these criteria pretty black and white. And then the expert, as we determined them, because there's scientific experts in each of our agencies, and the thought process was to bring one of them in to just look to see whether or not in the request itself those criteria had been met. Were they accepted practices? You don't necessarily need to be an expert in IFIM to know whether or not an IFIM study is an acceptable practice, as an example.

If there is a methodology to say there's something very specific about an IFIM that was

requested in the study, is there support for that request? Is the support reasonable with regard to those methodologies? Is it accepted? So what we had done is just envisioned -- what we wanted was in essence three experts. And we really didn't foresee that it was obvious which side of the coin each one of these experts was going to fall on just because they worked for a specific agency.

It tends to be when you get out of that negotiation process, that collaborative process, and you put it in front of an expert in the subject matter from anywhere. They can make an assessment based on those criteria whether or not the study is -- satisfies the criteria.

So what we had thought was that, you know, a lot for appearance is a lot for comfort. There would be somebody from FERC and somebody from the requesting agency because that's in essence where the issue lies. And then the third-party, again, to help them see clearly, if necessary.

But if there were 45 different study requests that were all in contention, the question of whether or not there would be 45 different panels or a number of different people on each one of those panels, I don't think we got that far into it. Each

one of the IHC representatives probably had a different idea how that was going to happen. But it's something that should be fleshed out.

MR. COX: The dispute resolution needs more, and we'll comment to that extent, and I think relating that to the criteria will help that in making sure the criteria -- and we heard yesterday how you folks are expecting the criteria to be more refined through this process of commenting. Because again, the licensees, yesterday you heard a lot of concerns about the dispute resolution process.

And the way I read it, it sure appears that when we get into studies, we're going to end up -- this proposal will end up being a dispute resolution process proposal because I think the agencies are going to challenge a lot of the things in the studies aspects, and we may end up in more dispute resolution than we do following this process which maybe isn't a bad thing due to the fact that the panel is set up to address those. But it just seems like hearing from the licensees, we're going to have a lot of trouble.

MR. DACH: Just to address that. We have a lot of trouble now. And the idea is to try to reconcile those issues early and quickly, and

then to move forward. So you're right. We could have, in a worst case scenario, 40 different things in the dispute resolution. But the fact of the matter is we'd rather have them in dispute resolution at that time under a process that's clear, and we can reconcile those issues and get it out of the way so we can move forward.

Otherwise under the existing processes, they'll just fester until you get to another step in the process where folks can make the same exact study requests and go through the same exact issues only now FERC would be involved. So the idea is understanding that that's going to happen to get something in place to address that before any of the studies are done. Because we feel we're in more of an awkward position if we have a disagreement on the study and it's conducted anyway.

And then that information is put forward, and then we're in the position of saying, well, we're sorry you spent \$800,000 on that study, but it wasn't the right one. So that's what we're trying to avoid because that's what puts us in a situation where somebody says, we just spent another \$800,000, we just --

MS. JANOPPAUL: This is a nice comparison

with the traditional license process. The next step going on to what Bob is saying is then that study that we didn't agree to, didn't support, doesn't meet our needs is included in the license application. And the 157 license applications that Tim mentioned were filed in 1993, there were an uncountable number of almost, I would just say, of additional information requests from agencies, tribes and others which makes it very difficult if you're already down here post filing, the application's been done, the studies done.

So I would still say the study dispute is probably our most conceptual part of our proposal and is the area where we're really looking for some input. So that's a very good area for you to help us out.

MR. COX: My comment wasn't that I thought that it was useless. It was that it needs some work. And our concern is just that, that we don't want everything to end up in dispute resolution through the process.

MR. McKITRICK: And I did hear that you will probably be filing written comments dealing with dispute resolution as well as the criteria.

MR. COX: Yes, because our comments on

the criteria will relate to the dispute resolution.

MR. McKITRICK: Good.

MR. DACH: And during the process, of course, the way that we had hoped and set in the IHC proposal -- the way we hoped you wouldn't have that situation occurring is through the fact that you had a period of time and a number of mandatory meetings and the scoping process in order to work those issues out.

So it wasn't one of those things where all of a sudden this was going to be sprung on you and you were going to go right into dispute resolution. The process is not set up to do that. The process anticipates quite a lengthy preliminary period where the parties can try to negotiate amongst themselves to figure out how best to do this, and then the dispute resolution process comes for those where you can't do that.

MR. THANNUM: Was there a thought of having one of us taking one person appointed for that dispute, an expert I'll put it? Because one of the things I was thinking about, that's a lot of different individuals. Are you going to have consistency on how the criteria is applied?

If you had one person appointed to be

that dispute person with an expert in these fields, then you've got some consistency. And if I'm a dam operator and I don't like that study you proposed, but I look at the record and all the other ones were sited with you, well, maybe I could work that issue out before we went to dispute. So it might be an indirect way to minimize disputes because you have some consistency.

MR. DACH: I guess the way that I was envisioning it would be that at least for any given process you'd have the same team to work on that whole process. Whether or not they would be the same people in every licensing is probably not going to happen. But the records from each of those licensees will influence the decisions that are made in subsequent ones.

For instance, we're requesting the exact same study for this project that we requested over here, and it was okay for those guys, why isn't it okay over here. We haven't gotten into that kind of detail.

MR. McKITRICK: Before we leave studies or development, or data gaps, is there anything else?

MR. THANNUM: Where in the process would

the tribes get the insight on the specifics of studies such as the number of samples to be taken, quality assurance, which of the boxes would we --

MR. DACH: Of course, where you want to make sure that you're satisfied is with the final study plan. So you're working on all of that information right up to the final study plan, and it's detailed.

MS. JANOPPAUL: In box four there's a draft study.

MR. THANNUM: So that's the information we should have the first look at.

MR. DACH: Actually box one there may even be -- the idea is that if the applicant knows what studies he wants to do, he puts this on the table of box one. You can put yours on the table any time you want. Box one would be great. You could do it during NEPA scoping.

But by the time the final comes out, you want to have your stuff in there. The process also anticipates though in each one of these study periods that the dispute resolution process would be available and that we don't send them off for two years to do studies and they come back with the results. But it contemplates the fact that there

would be involvement throughout the course of those studies to make sure that everybody is satisfied with the way they're being conducted.

MR. THANNUM: I think they should have some type of requirement at least after that first year in there that you have some type of meeting, where things stand, what's happening. Because otherwise --

MR. DACH: Box 12. And then again in box 13 what we have done is -- box 13 was this specific time point when everybody sits down. The studies that were anticipated have been completed, and we say to ourselves, do we have all the information that's necessary to move forward? And then again, dispute resolution is available in box 13.

So what we're trying to do is, again, the whole thing unfolds for us based on these studies. We want to make sure everybody is using the same studies and the same information to make whatever licensing decisions that they have to make. So we have built in -- right now as soon as the studies start, you have the annuals, so after the first year and after the second year determine whether or not any more are necessary and you have

enough.

So the idea is to do that. If it needs to be brought out and needs to be more clear exactly how that's going to happen, those are good comments.

MR. THANNUM: On 12, in addition to the review, the study results also talk about quality assurance, and I think it would be a good time to look at the quality assurance compliance and so forth at that time. Because going back to your point, you don't want this \$800,000 study done and here -- way back here it changed something in a sampling process or something occurred.

MR. DACH: That should be done before box 12.

MS. JANOPAUL: Have any of you had good experiences with study developments in alternative licensing processes?

MS. McCOMMON-SOLTIS: Doug has the most experience in that.

MR. COX: The alternative licensing processes I don't --

MS. JANOPAUL: No experience or no good experience.

MR. COX: No experience with study processes. Our project was traditional -- under

the traditional process.

MS. JANOPAUL: Are any licensees approaching you about alternative licensing process?

MS. McCOMMON-SOLTIS: We might know when our grant's done. I don't know at this point. It seems to me I saw something about it.

MS. JANOPAUL: That's supposed to be one of the benefits of the alternative licensing process is a collaborative development of study plans, information.

MR. COX: We did participate in -- there was a multi-project assessment done on the Menominee River in Wisconsin, and the aspects of the Sturgeon work that was being presented and carried out there and is still ongoing. We were involved in that but not -- we didn't get involved until most of the studies were already laid out what was going to be done and the plans for completing those.

So we weren't involved in the development of it, although I seen how it was completed, and it's really good for us to be involved in that. The results are very good. Plus there was the licensee power company is totally on board with that whole process. So there wasn't a lot of dispute going in.

The other aspect is there was a big chunk of money available through a trust fund settlement that was available to everybody to tap into.

MR. McKITRICK: I know Ann indicated she may have to leave by 1:30. Doug, can you stay or -- if there is anything that we haven't covered right now just to give you an opportunity --

MS. McCOMMON-SOLTIS: I think we've been pretty well through a lot of this stuff, and you have our talking points. I can't think of anything. I'm sure I'll think of five things when I'm on my way to the airport.

MR. McKITRICK: We can certainly continue, but I want to give you an opportunity.

MS. McCOMMON-SOLTIS: Thanks. And I appreciate you all being here for the three of us.

MS. MILES: Thank you for coming.

(Discussion off the record.)

MR. McKITRICK: One of the things that we haven't talked about specifically yet is the tribal sovereignty, tribal trust. If there are statements that you'd like to make, certainly you're welcome to do that.

MR. COX: The general ones I made at the

beginning were -- for my purpose were where I want to leave those today. We have full intent to expand on those and get in our written comments, and we're going to do that.

MR. THANNUM: I think what would be useful is within the process of the regulation reaffirming those points, the government relationships, the trust in that regulation. So to kind of give you the message as to the licensee that you have to reach out to the tribes, that there's a role there.

Because I think -- I'll go back to the point, a lot of licensees this hasn't happened for 100 years or 50 years, and they're in a situation where they're not familiar with a lot of the cases. And we're working with the tribes in our area, and it might be different than some of the other different regions of the country.

MS. McCOMMON-SOLTIS: I want to pipe in. I was thinking that original letter maybe that goes to the applicant very early on would be a great place to start educating about, here are tribes, here there may be one in your area. They have these rights. They may have off-reservation treaty rights and to start from the very beginning making them

aware because sometimes they're not aware, or sometimes they're aware the tribes are there, but they don't realize that the tribe has any authority that affects them in any way. So I think the earlier on you can start that process, the better off you are. Now I have to go.

MR. DACH: What seems to me would help just as I'm thinking my way through is if there is a defined step in the process that shows where this occurs. Because how I envision this is an applicant gets this process three years before he has to do anything, he looks at all the boxes says, okay, okay. And if he sees a box that says, have the tribe issues been addressed or something along those lines where it's very specific in there, and he says, I've got to find out which tribe I have to deal with.

If we could figure out how to work that into the scheme, I think would be helpful certainly from our perspective as we're developing the regs as we're looking through it. I don't know how it would pan out or how it would work out, but it would be good to see your ideas on how to make that work. I understand -- it's not even just a commission issue. I know it's a service issue, and I know it's

a NMFS issue from my experience with them that you're never quite sure how to pull that off. So any clarity that we could provide I think would be a good thing.

MR. THANNUM: I'll try to address one area that I know, the tribes' governments, for example, there could be maybe -- there could be tribal resolution for participation or something like that, an act of that government participation, and that kind of puts the ball back -- there's a tribal interest in there.

If there's a resolution passed by the tribal government, that license within my watershed isn't an issue, then you've got the government on record taking governmental action. It's just an idea, but I'm trying to get that response back and forth.

MR. COX: We developed some processes for other agencies also that we've used, and we can look at those and see how they might work with this process. Army Corps, for instance, we've worked on panels with them developing how to work on government-to-government bases and trust responsibilities. It's more broad than this, but parts of it might fit.

MR. THANNUM: I'm thinking the Forest Service MOU that received an award from Harvard University. So there's some models there that are out there that are proven very successful.

MR. DACH: I'm anticipating that the proposal would be better received from the tribes if it was drafted by the tribes than if we put something on the table. So, yeah, if you could ship something over.

MR. THANNUM: It might be a situation where I notice there's like an MOU that they talked about in the other option that maybe some type of MOU or something just with the tribes, the states and federal agencies from a natural resource perspective up front.

MR. COX: That's a good point. We looked at the same one when we were reviewing the NRG versus the IHC, and we found things that would work out of both that we liked and obviously things that we had problems with. But I'm finding pieces of the other one that might fit together and that was one of them, the MOU.

MR. DACH: What we had anticipated -- there was a lot of consternation on the group of how we were going to put out the NRG and IHC proposals

without having them unfortunately look like they were in some sort of competition.

When we first saw the NRG proposal, the first thing we did was like, yeah, that will fit in here fine, and it will work out well. And what we had hoped throughout this process was people would do that for us, and then offer their own suggestions on top of that. So there's the proposals themselves, the attachments A and B shouldn't be construed in any way as competing.

MR. THANNUM: Exploring that with tribes, what would their feeling be in the MOU process between its federal agencies, its government-to-government, its Interior Fish and Wildlife Service?

MR. DACH: Are you thinking on a general level or on a tribe-by-tribe basis?

MR. THANNUM: It might be project-by-project basis. You might be dealing with -- one project may be involving two or three tribes.

MR. COX: You definitely have to be on a project-by-project because you get MOU done -- a general MOU would be a very hard process to get through all the tribes.

MR. THANNUM: I'm thinking back to the

comment you had before, looking at time lines and what agency is going to do what, that's something to maybe explore that you have an understanding of what the different agencies are going to do and who is going to participate and share which data. That might be a good foundation to start that process.

MR. DACH: From our -- from the Fish & Wildlife Service perspectives, MOU's aren't easily generated. It's not like a half day event to put it on paper and get everybody to sign it. We work on these things. We can work on these things for years, and that's something that we would -- we tend to say, MOU, we don't want to go there, it will take us two years to get that down on paper. So that's why we tend to look for something more in a procedural requirement. That way the procedure's out there, we know what we're supposed to do.

So if the MOU type thing was proposed, it would be helpful to see it clearly proposed so we knew what was required to make it work rather than just saying an MOU would be a good idea.

MR. THANNUM: For example, we've got MOU's of the Fish & Wildlife Service conducting off-reservation assessments for fisheries. So we do those all the time. I guess what I'm thinking is

you might be able to have a model, for example, or off-reservation codes for hunting and fishing.

We've got a general model code that every tribe has, but one tribe may say on this particular lake I want to reduce the size limit, so there's some minor changes, but overall there's a model code.

So there might be something like that because we've had many MOU's with the Fish & Wildlife Service, everything from doing projects, circle of flight projects, wild rice reseeding. We've done a number of MOU's over the years.

MR. McKITRICK: Your experience is those happen fairly quickly?

MR. THANNUM: Those have been things that apparently did.

MR. DACH: They're a little bit different, and who is going to do what on the field for a project versus how we're going to conduct a policy level government-to-government consultation.

MR. THANNUM: I guess you could have -- what I'm looking at more specifically is a case-by-case situation. I'm looking at more of the specific project type situation.

MR. DACH: There's probably some room in

there.

MR. THANNUM: It might be Fish & Wildlife Service might be doing the spring PE and GLIFWC could come in and do the fall recruitment survey, Fish & Wildlife Service might be doing a soil survey. I could see that type of situation looking at what data to share.

MR. DACH: It would be good in your comments because I'm not seeing it quite that clearly or simply in my mind. I understand how -- on specific actions, and I have participated in actions like that.

What I'm having more problems understanding is the need and the necessity to ensure that the tribes' issues are met during a licensing process, when and how the consultation is going to be conducted, what parties need to be participating in the discussions, that sort of thing. So it's just -- it's any different -- it's a different subject matter which makes it a little more complicated.

MR. McKITRICK: If I can break in for a second. We kind of breezed through lunch and have taken some breaks. There's some folks that may need to break to get some food and do something. I'm not

sure where we stand with time and the best way to go about doing this.

Do you have a feeling that we're real close, or do you have -- and we don't mind coming back at all, but there's a necessity that we do take a break fairly quickly.

(Discussion off the record.)

MR. McKITRICK: I appreciate you all coming, and it was extremely helpful, and we'll start to understand how we can best interact with different things.

MR. THANNUM: Feel free to pick up the phone and call us too.

MR. DACH: I'll do my best and not argue with you.

MR. COX: If there's anything needed from Menominee, let us know, and we appreciate the opportunity to participate in the public process. Thank you.

(Proceedings adjourned at 2:00 p.m.)

\* \* \*

STATE OF WISCONSIN     )

) SS:

MILWAUKEE COUNTY     )

I, DAWN M. LAHTI, a Notary Public in and  
for the State of Wisconsin, do hereby certify that the  
hearing was recorded by me and reduced to writing under  
my personal direction.

I further certify that said hearing was  
taken at 300 West Michigan Street, Milwaukee, Wisconsin,  
on October 17, 2002, commencing at 9:15 a.m., and  
concluded at 2:00 p.m.

I further certify that I am not a  
relative or employee or attorney or counsel of any of the  
parties, or a relative or employee of such attorney or  
counsel, or financially interested directly or indirectly  
in this action.

In witness whereof, I have hereunto set  
my hand and affixed my Seal of Office at Milwaukee,  
Wisconsin, this 22nd day of October, 2002.

DAWN M. LAHTI - Notary Public

In and for the State of Wisconsin

My Commission expires: 7/4/04